TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 122.

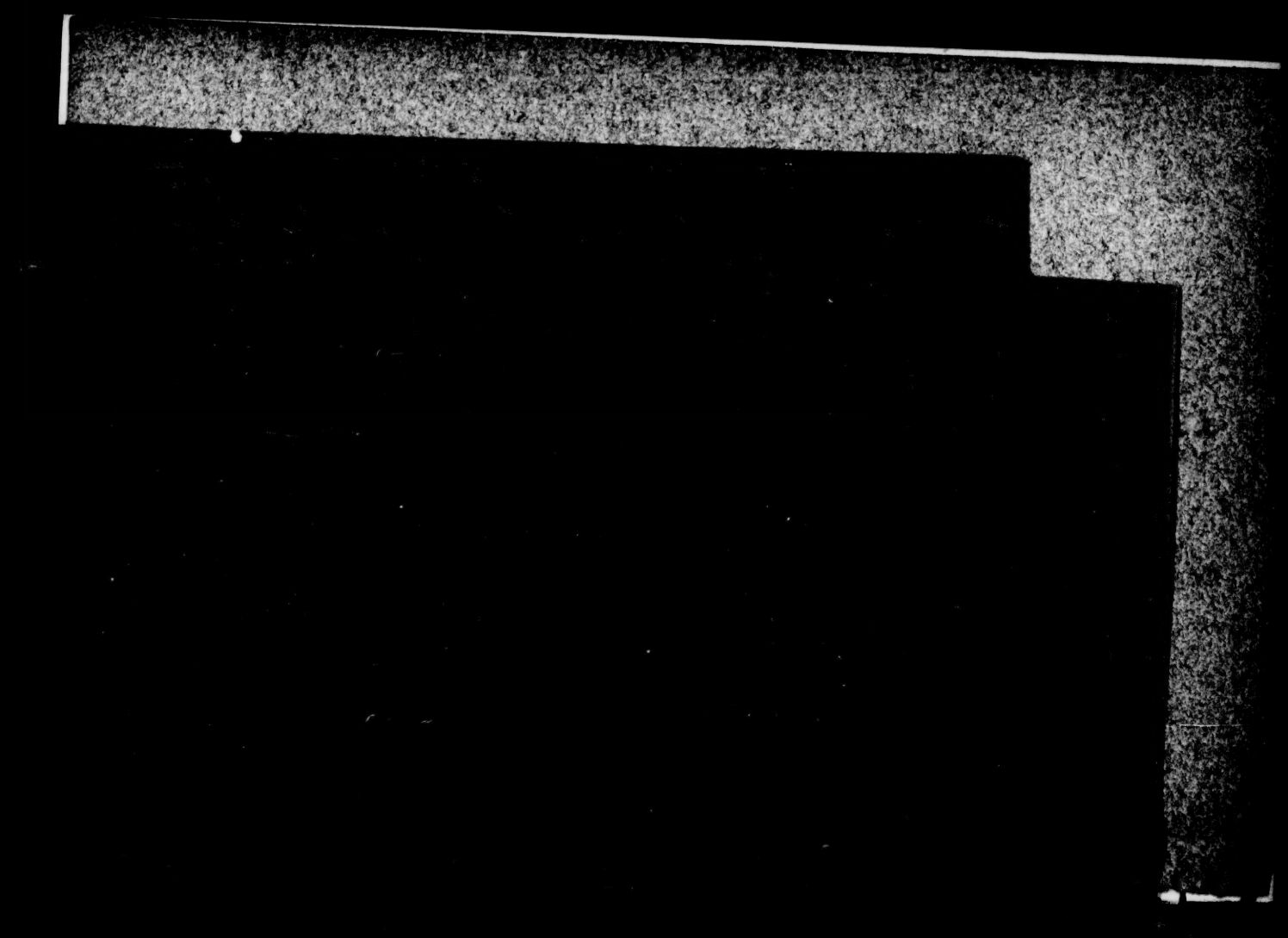
THE CANAL BANK OF NEW ORLEANS, THE CRESCENT CITY BANK, THE UNION BANK, THE LOUISIANA STATE BANK, J. MARSH DENMAN, AND A. BEDAULET, APPELLANTS,

vs.

WILLIAM B. PARTEE, SARAH D. PARTEE, JAMES D. PARTEE, ROBERT BOWMAN, THOMAS A. NELSON, JAMES STEWART, AND F. BARKSDALE, TRUSTEE FOR NELSON, LAMPHIER & CO.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF MISSISSIPPI.

FILED JUNE 5, 1876.



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1 Pleas and proceedings had and done in the circuit court of the United States for the southern district of Mississippi, at a special term thereof, held at the court-room in the city of Jackson, in said district, on the 4th Monday in January, A. D. 1875.

Before the honorable R. A. Hill, district judge of the United States for said district, present and presiding.

CANAL BANK OF LOUISIANA, CRESCENT CITY Bank, the Union Bank, the Louisiana State Bank, J. Marsh Denman & A. Bidault, citizens of Louisiana,
vs.
WILLIAM B. PARTEE, SARAH D. PARTEE, James D. Partee, Robert Bouman, Thomas A. Nelson, James Stewart and Fountain Barksdale, trustee of Nelson, Lamphier & Co., defendants.
} 185 N. S. In equity.

Be it remembered that heretofore, to wit, on the 1st day of April, A. D. 1873, the president, directors and company of the Canal Bank, of of Louisiana, The Crescent City Bank, The Union Bank, The Louisiana State Bank, all of which are bodies corporate, domiciled and doing business in the city of New Orleans, Louisiana, and J. Marsh Denman and,
A. Bidault, who are citizens of the State of Louisiana, by their
2 attorney, filed in the clerk's office of said court their bill of complaint, which, with the exhibits thereto, are in the words & figures following, to wit:

To the hon. the judges of the circuit court of the United States for the southern district of Mississippi, in equity:

The president, directors and company of the Canal Bank, of Louisiana, the Crescent City Bank, the Union Bank and the Louisiana State Bank, all of which are bodies corporate, domiciled and doing business in the city of New Orleans, Louisiana, and J. Marsh Denman and A. Bidault, who are citizens of the State of Louisiana, and who sue on behalf of themselves and all others claiming, under the trust deed hereinafter mentioned, bring this their bill against William B. Partee, Sarah D. Partee, James D. Partee, Robert Bouman, Thomas A. Nelson, James Stewart, and Fountain Barksdale, trustee for Nelson, Lamphier & Co., all of whom are citizens of the State of Mississippi, resident in the county of Yazoo, in said district, and thereupon your orator complaining show unto your honors and state—

On the 19th day of November, A. D. 1866, the said Sarah D. Partee,
and William B. Partee, her husband, being justly and truly in-
3 debted to your orators and others upon contracts made anterior to the late rebellion, which were valid, legal, and binding, in the amounts hereinafter mentioned, made their sundry promissory notes in writing of that date, and thereby at Yazoo City, Mississippi, in said district, undertook and promised to pay them the said sums of money, to wit:

To your orators, the said Canal Bank the sum of five thousand dollars, as represented in five several promissory notes, each for the sum of one thousand dollars, payable respectively on the first days of January, A. D. 1868, 1869, 1870, 1871 and 1872, and all bearing interest at the rate of eight per centum per annum from date. To your orator the said J.

Marsh Denman in the sum of forty-five hundred dollars, as represented in five promissory notes, each for the sum of nine hundred dollars, payable respectively on the first days of January, A. D. 1868, 1869, 1870, 1871 & 1872, and all bearing interest at the rate of eight per centum per annum from date.

To the said E. Dupassier & Co. the sum of thirty-six hundred dollars as represented in five promissory notes, each for the sum of seven hundred and twenty dollars, payable respectively on the first days of January, A. D. 1868, 1869, 1870, 1871 and 1872, and all bearing interest at the rate of eight per centum per annum after date.

4 To your orator the said Union Bank, of Louisiana, the sum of twenty-two and seven $\frac{50}{100}$ dollars, as represented in five promissory notes, each for the sum of four hundred and forty-one $\frac{50}{100}$ dollars, payable respectively on the first days of January, A. D. 1868, 1869, 1870, 1871 & 1872, and all bearing interest at the rate of eight per centum per annum from date.

To your orators, the said Lousiana State Bank, of Louisiana, the sum of twenty-one hundred and fifteen dollars, as represented in five promissory notes, each for the sum of four hundred and twenty-three dollars, payable respectively on the first days of January, A. D. 1868, 1869, 1870, 1871 and 1872, and all bearing interest at the rate of eight per cent. per annum from date.

To your orators, the said Crescent City Bank, the sum of two thousand dollars, as represented in five promissory notes, each for the sum of four hundred dollars, payable respectively on the first days of January, A. D. 1868, 1869, 1870, 1871, and 1872, and all bearing interest at the rate of eight per centum per annum from date until paid.

All of said promissory notes were duly executed and delivered to the parties respectively entitled thereto, and remain and are wholly
5 unpaid. The said Sarah D. Partee and William B. Partee, though often requested, have hereunto wholly failed and refused and still fail and refuse to pay any part of said notes, all of which were payable at the Citizens' Bank in New Orleans, Louisiana, and are herewith filed as exhibits 1 to 30 inclusive. All of said notes bear on their backs an endorsement of the clerk of the probate court of Yazoo county that they are secured by deed in trust recorded in his office.

In order to induce the acceptance by your orators of said notes in novation and discharge of the debts then and for a long time prior thereto due and owing to them as above stated, the said William B. Partee and Sarah D. Partee, his wife, made, executed, and delivered to your orators their certain deed in trust, wherein one Robert Bouman, an attorney at law, resident at Yazoo City in said district, is the party of the second part, and the grantor of the premises thereby conveyed. Said deed is dated November 19, 1866, and was on that day duly acknowledged and recorded in the office of the then probate clerk of Yazoo County, in which said lands are situated.

By said deed, for the consideration of ten dollars cash in hand paid, the said Partee and wife bargain, sell, and convey to the said
6 Bouman the following lands, lying, being, and situate in said district, to wit:

North half of section ten, the north half of section twenty-four, southwest quarter of section twenty-four, southeast quarter and southeast quarter of the northeast quarter of section twenty-seven, township twenty, range two west; southwest quarter section five, township twenty-three, range one east; section fifteen, township twenty-three, range two west; south half section ten, southwest quarter section eleven, south-

east quarter section twelve, west half of section twenty three, west half northwest quarter section twenty-four, township twenty-three, range two west; north half of northeast quarter & north half northwest quarter, section eighteen, west half section seventeen, all of section thirty-four, west half section thirty-five, township twenty-four, range four west; all of section twenty-three, the north half of section twenty-six, township twenty-four, range four west; all of section twenty-nine, northwest quarter section thirty two, township twenty-four, range three west; east half section two, township twelve, range four west; containing 6,360 acres, more or less, lying in the counties of Sunflower and Tallahatchie, in said State; and the following lands lying in said county of Yazoo, in said district, to wit:

7 Lots 3, 4, 5, 6, 7, and 8, and 28¼ acres in lot one, section five, all of section six, northeast quarter section eight, south half section nine, northeast quarter and south half of northwest quarter section ten, east half of northwest quarter of section eleven, all of section fourteen, west half of northeast quarter, northwest quarter and south half of section eleven, north half and east half of southeast quarter of section fifteen, north half and southeast quarter of section twenty three, west half section twenty-four, township nine, range four west; also the north half of section one, northwest quarter section two, northeast quarter of section three, township nine, range five west; lot seven section thirty-one, lot seven section thirty-two, township ten, range four west; lot six section thirty-four, lot seven section thirty-five, lots four and five section thirty-six, township ten, range five west; northeast quarter and east half of northwest quarter section eleven, west half of west half section one, east half of southwest quarter of section two, township twelve, range four west; together with all the mules, horses, cattle, farming implements, &c., belonging to said Partee and wife.

Said deed was upon the following trust and conditions, as recited therein, to wit:

8 That whereas the said Sarah D. Partee was indebted to your orators and others to the aggregate amount of one hundred and twenty-five thousand dollars, exclusive of interest, and was unable to pay said indebtedness in full, and was desirous of securing to all her creditors equally and alike, according to the amount she may ow' each, with the remnant of her estate, consisting of lands and personalty aforesaid; and whereas a large number of the holders of said claims had signified their consent to release and discharge her from the aforesaid claims upon her and her husband, securing to them one-half of the amount of the principal of said claims, to be evidenced by promissory notes to each creditor respectively, bearing date the day of said deed, payable in five annual instalments, to wit, on the first day of January, 1868, 1869, 1870, 1871, and 1872, with interest at the rate of eight per centum per annum from date until paid, and for the remainder of the principal of the other half of the aforesaid claims to take the aforesaid lands in Tallahatchie and Sunflower Counties at ten dollars per acre:

Therefore, in order to carry out the aforesaid settlement and payment of said indebtedness, the said Sarah D. Partee and her husband agreed

9 to execute their said five promissory notes to each of said creditors for one half the principal of the debt due him or her as stated, and the said lands were conveyed to said Bowman, trustee, for the use and benefit of said creditors, and for the purposes following, to wit:

Said Bowman was to have and hold said lands in Sunflower and Tallahatchie Counties for said creditors, who shall accept the same on the terms hereinbefore stated, and for the remaining half of the principal of their debts the notes of said Sarah D. Partee, as hereinbefore mentioned. And said Bowman was directed at the request of a majority of said creditors, or them holding the largest amount of claims, sell the aforesaid lands at public sale at such place as he may deem most advisable and proper, for cash, upon notice by advertisement for days of the time and place of sale in some newspaper in this State, which will, in his opinion, give most general notice thereof, and the proceeds of sale, after deducting expenses of sale and commissions, shall divide among said creditors of said Sarah D. Partee.

Said deed contained other conditions in relation to said lands in Tallahatchie & Sunflower not necessary here to mention, and which are omitted to avoid prolixity.

10 In reference to the payment of the notes to be given for one-half of the principal amount of said debts, said deed was upon this trust and condition, that upon the failure of said Sarah D. Partee and William B. Partee to pay at maturity any of the said notes falling due as above set forth, then, at the request of the holders of the same, the said Bowman, trustee, was directed to sell the aforesaid lands, lying and being in the said county of Yazoo, and said personalty, or so much as might be necessary to pay said notes, at public sale, to the highest bidder, in front of the court-house door of Yazoo City, in said county of Yazoo, first giving thirty days' notice of the time & place of sale, by advertisement in a public newspaper in said county, and the proceeds of sale to divide, after deducting expenses and his commissions, and apply to the payment of the said promissory notes, and as said notes became due and payable respectively, like proceedings were to be had, until all of the same were fully paid off and discharged.

It was also, in and by said deed, covenanted and agreed that the said Sarah D. and William B. Partee were to remain in peaceable and quiet possession of said lands in Yazoo County, as well as of said personalty,

11 until the same are sold under the provisions of said deed, and that the rents and profits arising therefrom, after the payment of all plantation and other necessary expenses, are conveyed thereby to said Bowman, trustee, to be applied, appropriated, and used for the payment of said promissory notes.

It was further stipulated in and by said deed, that if any of said creditors should fail, within ninety days from the date of said deed, to signify in writing their acceptance of the terms of settlement and payment of their claims as therein provided for, such creditor so failing to accept will and shall be counted as refusing the same, and shall be barred of benefit, right, advantage, or privilege of the terms and provisions of said deed. Said deed was to be void if the said Sarah D. and William B. Partee paid all of the notes executed as contemplated therein; all of which will more fully and at large appear by reference to said deed, which is herewith filed as Exhibit A, and prayed to be taken as part hereof.

Your orators further state that they availed themselves of the benefit of said deed of trust, surrendered the old notes held by them and took new notes, as required, which are herewith filed, and the old notes so surrendered have long since been cancelled and destroyed by the said Sarah D. Partee.

12 Whether any other creditors of said Sarah D. than they have

accepted the terms and conditions of said deed, your orators know not, but they are advised, by reason of the premises, are entitled to all the benefits, privileges, and immunities contained in said deed, to all intents and purposes, notwithstanding their failure so to do. And not only this, but that all the creditors of said Sarah D. Partee who have not accepted the terms of said deed may still do so, and that the pretended covenant in said deed, by which it was purposed to bar them, upon failure to accept, is void, as being in contravention of law and public policy. The said deed was signed, sealed, and delivered by said Sarah D. and William B. Partee in due form of law, and the trust thereby imposed upon him was accepted by said Robert Bowman. In fact, the deed was written by him and the whole labor of conducting the settlement thereunder was done and performed by him.

On the 21 November, 1866, the said Bowman, writing in the name of his firm, Messrs. Wilkinson & Bowman, of Yazoo City, addressed to your orator's attorneys in the city of New Orleans a letter, now in their possession, in which he distinctly accepted said trust, and stated
13 that there was a judgment for five thousand dollars against the property conveyed by said deed, "which the plaintiff will settle on favorable terms," and that the "new claims or notes will be secured beyond doubt." A copy of this letter is herewith filed, marked "Exhibit B," and prayed to be taken as a part of this bill.

In the original proposition for a settlement, as made by Mrs. Sarah D. Partee, copy of which is filed herewith and as part hereof, marked "Exhibit C," she distinctly states that, "in order to secure confidence in the necessary writings, titles, &c., incident to a final close of my proposition, I have selected Judge Robert Bowman and Judge Wilkerson to see to the proper execution of the deed" * * * "to a responsible trustee for the benefit of creditors."

Your orators herewith file as Exhibit D copy of receipt signed by said William B. Partee, showing the parties to whom new notes were given under the provisions of said trust deed, and from whom old notes were received, and by whom surrendered to him. This receipt is dated January 21, 1868, and the original will be produced and proved at the hearing, if required.

Your orators further show unto your honors that the said firm of Wilkinson & Bowman instituted in the circuit court of Yazoo County,
14 to the May term, 1866, an action against the said Sarah D. Partee and her husband, William B. Partee, upon a promissory note for the sum of $5,397.87, dated New Orleans, December 18, 1861, and payable twelve months after date to the order of and by Rotchford, Brown & Co. endorsed, then held by one James Stewart. Summons was regularly issued therein on the 28th day of April, 1866, which was delivered to the sheriff of said county of Yazoo, and returned by him with the following endorsement:

"Executed May 10, '66, by delivering a copy of the within to the within named parties.

"S. M. DYER, *Sheriff*,
"By CHA'S C. DYER, *Deputy*."

On the 6th day of June, 1866, at said May term of said court there was rendered in said cause a judgment by default against the said Sarah D. Partee and William B. Partee, her husband, for the sum of $6,894.86. On the 15th April, 1867, there was made in said cause a pretended release of errors in these words:

"We hereby release all errors in the above-stated cause.
"Witness our hands and seals, this 12th day of April, 1867.
"W. B. PARTEE, [SEAL.]
"SARAH D. PARTEE." [SEAL.]

Attest,
C. T. CALHOUN.

On the 18 February, 1868, the said Partee & wife prosecuted a writ of error to said judgment to the high court of errors and appeals, upon some pretence or other, which they and the said Robert Bowman pro-
15 cured to be dismissed fraudulently, intending thereby to defeat, hinder, and delay your orators. Said writ was not sued out for any bona fide purpose of defence, but as a mere trick and device to consummate a fraudulent purpose to defeat the trust deed aforesaid, under which your orators claim. Your orators are advised, believe, and charge the law to be that said judgment by default against said Sarah D. Partee and her husband was absolutely null and void for this, that neither the said William B. nor the said Sarah D. Partee was served personally with process in said cause; that no pleas were filed nor appearance entered by them, and the said judgment by default was rendered at the return term of the summons or suit, in direct contravention of a positive law of this State, which provides that no judgment by default shall be entered at the return term when it shall appear that the process has not been served personally on the defendants, and was rendered against a married woman, as to whom the note was prima facie void. Nor can the pretended release of errors avail in the said cause, because it is unsupported by any consideration, good or valuable in law, and was not executed according to law. All of which will more fully appear from
16 a transcript of the proceedings in said case, which is herewith filed, marked "Exhibit E," and prayed to be taken as part bill.

On the first day of January, 1867, a writ of fieri facias was sued out of the said circuit court upon said judgment, or pretended judgment, which was levied by one John T. Heth, who pretended to act as deputy sheriff of said county of Yazoo, upon the lands situate in the said county of Yazoo, and conveyed in and by said trust deed to the said Robert Bowman, trustee. This writ was issued at the instance and request of said Bowman, claiming to act as attorney for the said James Stewart. The fieri facias, levied as aforesaid, was returned into court on the 9 April, 1867; and on the 7th December, 1868, the said Bowman sued out of said court a writ of venditioni exponas, directed to the sheriff of said Yazoo County, and commanding him to sell said lands so levied upon as aforesaid. This writ has upon it the following endorsements:

"Rec'd Dec. 8, 1868.
"S. M. DYER, *Sh'ff.*
"JOHN T. HETH, *D. S.*"

And
"The within described property sold Jan'y 5th, 1869, for five thousand seven hundred dollars; applied to costs $93.50; to plaintiff's money, $5,656 $\frac{56}{100}$; and defendants have no further goods or chattels,
17 lands or tenements, in my county, where any further sum can be made.
"S. M. DYER, *Sheriff*,
"By JOHN T. HETH, *D. S.*"

All of which will more fully appear by reference to copies of said writ

herewith filed, marked "Exhibit F," and prayed to be taken as part of this bill.

From said record it appears that the sheriff of said county did not return on said writ of fieri facias that the lands levied on by virtue of the same remained in his hands unsold, and that said writ of venditioni exponas was not issued until nearly two years had expired after the pretended levy of said execution and the return thereof. Your orators are therefore advised, believe, and charge the law to be, that this was unwarranted by law; that the said writ of vendi. ex. was improvidently and illegally issued, and did not authorize the sale of said Yazoo County lands, and that the sale of said lands under said writ passed no title to the purchaser.

Your orators further state that they are informed, believe, and state that the said Heth was not the deputy sheriff of said Yazoo County when the said writ of fieri facias was levied, nor when said pretended sale of said lands was made, and that he had no authority in law
18 to make sale thereof. Notwithstanding which, however, the said S. M. Dyer, sheriff of said county, on the 5th day of January, A. D. 1869, executed to James Stewart, the creditor in said judgment, a deed in which the rendition of said judgment, the issuance of a writ of fi. fa. thereon, the levy thereof upon the said lands in Yazoo County, and the return of said writ, the issuance of said vendi. exponas are recited, and the statement made, that, on the 5th day of January, 1869, after giving due and timely notice of the time, place, and terms of sale according to law, the said lands were exposed to sale at public auction before the court-house door in Yazoo City, when and where said James Stewart became the purchaser of part of said lands, to wit, lots 3, 4, 5, 6, 7, & 8, & 28 acres; lot 1, section 5, all section six, northeast quarter section 8, township 9, range 4 west; north half section 1, northwest quarter section 2, northeast quarter section 3, township 9, range 5 west; lot 7, section 31, lot 7, section 32, township 10, R. 4 west; lot 6, section 34, lot 7, section 35, lot 5, section 36, township 10, range 5 west, for the sum of $5,200, that being the highest and best bid for said lands.

For said consideration the said sheriff granted, bargained, and sold said lands to said Stewart. The deed was acknowledged and deliv-
19 ered to said Bowman, February 18, 1869, and a copy of it is herewith filed, marked "Exhibit G."

On the said 4th day of January, 1869, the said sheriff executed another deed by which all the rest and residue of said lands in Yazoo County were conveyed to James D. Partee, the son of said William B. and Sarah D. Partee, for the consideration of $550. Said deed, though dated the 4th day of January, 1869, was not acknowledged or delivered until the 14th day of said month; all of which will more fully appear by reference to a copy of said deed which is herewith filed as Exhibit H, and prayed to be taken as a part of this bill.

The return on the writ of vendi. ex. shows that the said Yazoo County lands were sold on the 5th day of January, 1869, but does not indicate to whom, nor is there made in said return any memorandum in writing of the name of the purchaser, nor the party to whom the lands were adjudicated at the sale, nor that the law in such case made and provided was complied with it at all. In fact, there was no notice, or at best, no such notice as the law required, given of the sales of said lands under said writ of venditioni exponas.

Your orators are advised, believe, and charge the law to be,
20 that writs of venditioni exponas confer no new power on sheriffs, but only require them to do what they were authorized to do by

the execution which preceded them, and that in this State such writs can only be lawfully issued when lands or property "taken in execution remain in the hands of the officer unsold", and when this fact "is returned by the officer in the execution"; and not only this, but such writ must be issued as soon as the facts are disclosed by the record. They are further advised, believe, and charge the law to be, that a long, unreasonable, and unexplained delay in the issuance of any such writ of venditioni exponas absolutely avoids the writ in toto, and all things done under color thereof are void or certainly voidable.

Wherefore, upon said exhibit and the law thereon arising, your orators charge that the said sales by said sheriff, S. M. Dyer, sheriff, &c., under said writ of venditioni exponas are absolutely null and void, or at best, voidable for the following reasons:

1. The said writ was issued without the authority of law, and in direct contravention of the statute.

2. The return upon said writ of venditioni exponas fails to state the facts which the statute requires as conditions precedent to a judicial sale under final process.

21 3. The judgment of which the sale is predicated was rendered against a married woman at the return term of the summons issued in said case, without personal service of process or appearance of parties, or at least on defective service of process, and is void or at least voidable.

4. The alleged release of errors contained in said proceedings is absolutely void, and imparts no validity to said judgment, being unsupported by any consideration good or valuable in law, and made by a feme covert.

5. The sale under said venditioni exponas was not advertised according to law, nor made on a sale day provided by law, and the return thereon does not show that any one became the purchaser of said lands.

6. There is not entire uniformity in the return on said writ and the deeds under which the parties claim title.

7. The proceedings under which said sales were made were fraudulent, and intended to hinder, delay, and defraud the creditors of said William B. & Sarah D. Partee.

8. The sheriff failed to give the notice of sale required by law, and the return to said writ does not state the names of the purchasers,

22 nor how the lands were sold, nor the place at which they were sold, nor that the same were advertised for sale.

Your orators further state to your honors that neither the said James Stewart nor the said James D. Partee was present at the sale of said lands under said writ of venditioni exponas; that no part of the alleged purchase money was paid; that the whole thing was managed and directed by said Bowman, the attorney for said Stewart, and the trustee for your orators in said deed of trust; and that said sale was consummated upon an agreement made between said Bowman, William B. and James D. Partee, that part of the lands should be bid in by said Stewart for his debt, and the residue by said James D. Partee, who, with said William B. Partee, agreed in consideration therefor to pay the fees that were owing by said Stewart to said Bowman, which was done some time after, but not at the time of or before said sale. And this was done to secure the possession and enjoyment of said property to said William B. Partee and Sarah D. Partee, or at least to keep it in the family. For some time prior to said sale the said William B., Sarah D., and James D. Partee were in possession of said lands, enjoying the proceeds and income thereof in common.

23 Your orators further show unto your honors that at the time of the issuance of the execution on said judgment, and at the time said execution was levied on said lands, and at divers and sundry times after the alleged rendition of said judgment and prior to the sale of said lands, the said William B. Partee and Sarah D. Partee had in their possession or subject to seizure and sale under said writ of fieri facias, in said county of Yazoo, ample personalty, over and above their statutory exemptions, consisting of mules, cattle, oxen, farming implements, household & kitchen furniture, wagons, &c., &c., to have paid off and discharged said alleged judgment. This fact was well known, as well to said Bowman and Stewart as to said Dyer, sheriff, and the said personalty would have been levied upon and sold in due course of law but for the order and direction of said Bowman, who in the matter of said sale, and in fact as to all the matter herein complained of, was, as your orators are informed, believe, and state, the attorney for said William B., Sarah D., and James D. Partee, as well as the attorney for said Stewart.

24 From the time said trust-deed was given to said Bowman and recorded, as hereinbefore set out, until some time in the year 1869, your orators rested content with the arrangement of their debts, believing, as was represented to them by said Bowman, trustee, that the security for the payment thereof was ample, and confiding in the honesty, integrity, and good faith of said Bowman; and wholly relying upon his good faith, fidelity to his trust obligations and disposition to do what was his plain duty, to advise your orators if at any time the said trust property and fund was endangered, they failed to give themselves any concern about the matter. This they did for the additional reason that the security for their debt was thought to be ample, and was so represented by said Bowman, and they did not feel disposed to crush an honest debtor who had suffered severely from the late rebellion.

During the year 1869 they accidentally learned that the said Yazoo lands were sold under said Stewart judgment, at the instance of said Bowman, their chosen trustee, and who had failed to give them any notice thereof. Your orators had ample means, at any moment, to pay off said judgment and all other prior liens on said lands whenever the

25 exigency of the case so required, and would have done so at any time, when notified by said Bowman, who was then, and has been ever since the war, a resident of Yazoo City, in said county of Yazoo, and they looked to said Bowman to give them such notice, and wholly trusted to him so to do. At no time has he declined the office of trustee in said deed, but, on the contrary, he accepted the office, induced your orators to take said trust-deed by his representations, and yet, prior to the maturity of the first note, held by them under said trust-deed and compromise, sued out said execution and had it levied upon said Yazoo County lands; and so your orators say said proceeding on the part of said Bowman was a gross and unpardonable fraud on their rights, and was intended to hinder and delay them.

Your orators further state that the debt reduced to judgment by said Bowman was provided for in and by said trust deed, and the said Yazoo lands constituted all the real property of the said William B. Partee and Sarah D. Partee of any appreciable value, the lands in Tallahatchie and Sunflower Counties being wild and uncultivated, and long since

26 sold for taxes. The sale, under said writ of venditioni exponas, was made at a time when lands at forced sales would bring nothing, as said Bowman and said William B. and Sarah D. Partee knew, and when no opposition in bidding could be reasonably anticipated, for

the purpose of hindering and delaying your orators. Neither the said Stewart nor the said James D. Partee are bona fide purchasers of said lands without notice and for a valuable consideration; but, on the contrary, both knew of the existence of your orators' said trust-deed and of all the infirmities in their said executed titles, and neither paid any money for said lands at the time of the sale or afterwards.

Your orators further state that about the 8th March, 1869, when they learned of said sale under said Stewart judgment, they wrote to said Bowman, expressing their great surprise thereat, and received a reply from him, in which he claimed that, for some technical pretence, said Partee and himself treated said trust-deed as a nullity, when they both knew your orators had in good faith accepted said new notes and trust-deed, and were reposing upon them with the utmost confidence, super-induced by their joint representations. Notwithstanding which,
27 they had property sold under execution, which they knew to be worth at least forty thousand dollars, and which said Bowman himself represented to be worth fifty thousand dollars, for the sum of $5,750, which sum was fixed by agreement of parties to be bid as heretofore stated, and in consummation of a fraudulent purpose to hinder, delay, and defraud your orators; and the more perfectly to effect said purpose, had the sale made to persons who paid no money, and who did not even pay the costs in the cause until the 19th day of June, 1867. Your orators further state that said Bowman is closely connected by affinity with the said Partees, and ever since the sale of said lands, under said venditioni exponas, the said Partees have been in possession thereof.

Your orators further show unto your honors that on the 13th day of January, A. D. 1869, the said James D. Partee and his wife, Isanie Partee, to secure an alleged debt due Stephen O. Nelson, Thomas A. Nelson, and James L. Lamphier, merchants under the style of Nelson, Lamphier & Co., conveyed to the defendant Fountain Barksdale, as trustee, the lands purchased as aforesaid by said James D. Partee,
28 known as "No Mistake," "Tyrone," and "Seven Gums" plantations, and which are hereinbefore described.

This deed of conveyance recites that said Partee was justly and truly indebted to said merchants in the sum of $27,000, being the amount of his notes as set out therein, dated 11th January, 1869, and payable to his order and endorsed, and also for the sum of five thousand dollars for any supplies which they might advance to him, and was desirous of securing the same, and therefore said lands were sold and conveyed to said trustee, upon conditions that if default was made in the payment of the alleged debts and notes secured thereby the said trustee might sell to the highest bidder for cash, &c., &c.

By this deed all the right, title, claim, and interest which said Partee had in the estate of his grandfather, Christopher Todd, which were obtained from his mother and one Christopher T. Calhoun, were sold to said trustee for the same purpose. This deed bears upon its margin the words, "Satisfied Feb'y 26, 1870. Nelson, Lamphier & Co.," and a copy of it is herewith filed, marked "Exhibit I," and prayed to be taken as part of this bill.

On the 24th day of February, A. D. 1870, the said James D. Partee and wife conveyed by deed of that date to the said Fountain
29 Barksdale, as trustee for the said Nelson, Lamphier & Co., the same premises conveyed by said deed of January 3, 1869, to secure a debt of $33,500, and plantation supplies to the amount of $8,000. This deed contains the same conditions as are set out in the other, was

duly executed, and a copy thereof is herewith filed as Exhibit J, and prayed to be taken as a part of this bill.

On the 10th day of August, A. D. 1871, the said James D. Partee and wife conveyed to the said Barksdale, as trustee for said Nelson, Lamphier & Co., to secure an alleged debt of $33,500, as represented by the notes set out in the deed of the year 1870, his note for $2,000 and supplies then furnished of $1,515, the crops of cotton to be grown on said plantation during the said year 1871. This deed recites that the supplies contemplated by said deed of 1870 had been paid, and a copy thereof is herewith filed as Exhibit K, and prayed to be taken as a part of this bill.

On the 26th day of April, 1872, the said James D. Partee and wife conveyed to said Barksdale, as trustee for said Nelson, Lamphier & Co., to secure said debt of $33,500 and certain plantation advances, the crop to be grown on the Lake Dick plantation during the said year 1872, a copy of which conveyance is herewith filed as Exhibit L, and prayed to be taken as a part of this bill.

30 On the 10th day of June, 1872, the said Barksdale, trustee, executed and delivered to said Thomas A. Nelson, a member of said firm, a deed conveying the said lands included in the said trust deed of 1870 for the consideration of $3,100 cash in hand paid, a copy of which is herewith filed as Exhibit M, and prayed to be taken as a part of this bill.

Upon said exhibits and from information and belief your orators charge and state that at the time the said trust deeds of 1869 and 1870 were executed the said James D. Partee was not indebted to the said Nelson, Lamphier & Co. either in the sum of $27,000 or in the sum of $33,500, but both of said sums represented antecedent debts of the said William B. and Sarah D. Partee, and which were secured by said deeds at the instance and request of the said W. B. Partee; that all monies advanced and loaned by said firm to the said James D. Partee, either in the shape of supplies or otherwise, were fully paid off and discharged by said James D. Partee; that the greater portion of said "old debt" was also paid off and discharged; that the other premises than said lands conveyed by said deeds were and are ample security for said old debts or the balance due upon them; that at the time of the sale by said

31 Barksdale, trustee, the balance due upon said old debts was a sum not exceeding three or four thousand dollars; that the sale under said trust-deed by said Barksdale was made upon a secret agreement and understanding between said James D. Partee and said Nelson, Lamphier & Co.; that the same was not to operate as a complete sale and conveyance, but even after the sale that the said James D. Partee was to have the benefit of redemption; that said James D. Partee, William B. Partee, and Sarah D. Partee are still in possession of said lands and have been ever since the late war, and have continually received, used, and appropriated the rents, issues, and profits thereof; that long prior to the execution of any trust deed by said James D. Partee and wife to said Barksdale your orator's said trust-deed was of record in the said county of Yazoo; that your orator's said trust-deed was filed and recorded in the said county of Yazoo on the 19th day of November, 1866, and the said Nelson, Lamphier & Co. and said Barksdale were fully apprized of that fact, and had notice of all the facts in connection therewith, and of the rendition of said judgment, and the infirmities in said executive titles, as hereinbefore set out; and the said Thomas A. Nelson

32 and his said firm are not bona fide purchasers for value and without notice of the said Yazoo County lands.

Your orators further state that the said firm of E. Dupassier & Co, after the execution of said trust-deed, suspended business, and your orator, A. Bidault, was legally appointed liquidator of their business, and is entitled to demand, have, receive, receipt for, and collect the said notes executed and delivered to them as aforesaid. Inasmuch, therefore, as your orators are without remedy, save in a court of chancery, they pray that the said William B. Partee, Sarah D. Partee, James D. Partee, Robert Bowman, Fountain Barksdale, Thomas A. Nelson, and James Stewart be made parties defendant hereto, and compelled to answer, but not under oath, all the allegations hereof, and particularly let them answer under oath the interrogatories hereto append' and propounded to them.

And on final hearing, your orators now offering to redeem said lands and pay off said Stewart judgment, if valid, pray that the said execution titles be vacated, set aside, and for nothing held, and your orators decreed to pay to said Stewart the amount of his said judgment, if to your honors it shall seem meet and proper, your orators in that event hereby offering to do so; that an account be taken and stated of
33 the amounts received, as well by said Stewart as by said James D. Partee, of the rents, issues, and profits of said lands from the day of the alleged sale of said lands until the final hearing, and that they be decreed to pay the same, the amount of said judgment being allowed said Stewart as a credit thereon; that the said deed by said Barksdale, trustee, to said Nelson be vacated and set aside; that an account be taken and stated of the amount due your orators upon said notes, and the amount due such other creditors secured thereby as may choose to come in and prove their claims thereunder, and the said William B. Partee and said other defendants decreed to pay the same on some future day to be named; that a new trustee be appointed in the place of said Bowman, and upon default made by said defendants of the amounts due your orators; that said new trustee be decreed to sell said Yazoo County lands, or so much thereof as may be of value sufficient to pay the amount due your orators; and that said defendants be enjoined from asserting title to said lands. Or, if mistaken in the relief sought, then for such other, further, and final relief and decree as to equity belongs, and your orators' case requires.

34 In the mean time your orators pray that a receiver be appointed to take possession of said Yazoo County lands and have the same from year to year under the orders of your honorable court, until the final hearing.

May it please your honors to grant your orators the gracious writ of subpœna, directed, &c., commanding, &c., and as in duty bound, your orators will ever pray, &c.

NUGENT & YERGER &
A. M. HARLOW,
Sol's for Compl't.

Interrogatories to Robert Bowman, esq.

Int. 1. State who were present at the sale made by the sheriff of Yazoo County under the writ of venditioni exponas issued in the case of James Stewart vs. William B. and Sarah D. Partee, and by whom, in person, the lands sold under that writ was bid in? How did it happen that part of the lands purchased were adjudicated to James Stewart for $5,200, and part to James D. Partee, for $520? What preliminary arrangements were made touching said sale? What negotiations were

made between you and your firm as attorneys for said Stewart, and the said Partees, or either of them? What induced these negotia-
35 tions? What, at the time of the sale, was the value of the lands adjudicated to said Stewart, and what that of the lands conveyed by the sheriff to James D. Partee? Was there not, prior to said sale, some agreement between your firm and the said William B. or James D. Partee, as to said sale and purchase? Was there any money paid on the day of the sale? If so, to whom, and how much?

Int. 2. For what purpose and why was the "release of errors" filed in the said case of Stewart vs. Partee? What induced it? At whose instance was it made? Upon what consideration and agreement?

Int. 3. Why did you not, and why did not said William B. Partee notify the complainants that the Yazoo County lands were to be sold under said writ of vendi. exponas? Did you not know that they would have paid the judgment before seeing the land sacrificed?

Int. 4. By whom and when was your fee in said case of Stewart v. Partee paid?

Int. 5. File copies of all letters from you or your said firm of Wilkinson & Bowman to said Stewart touching said judgment
36 and sale, and all from him to yourselves?

Int. 6. Why did you so long delay the issuance of said writ of venditioni exponas after the return of the execution issued in said case of Stewart vs. Partee and wife?

Int. to William B. Partee and James D. Partee.

Int. 1. Why did you not notify the complainants of the sale of the Yazoo County lands owned by M'r's Partee under the writ of venditioni exponas in case of Stewart vs. Partee, said county, so that they might have opportunity to pay the judgment?

Int. 2. What was the value of the lands at said sale which was adjudicated to said James D. Partee; how many plantations were comprised in them; how did it happen that the bid was exactly five hundred and fifty dollars; to whom and when was this money paid?

Int. 3. Did you not compromise the judgment of Stewart; if so, when; who conducted the matter for you; why was the release of errors filed in the case of Stewart vs. Partee & wife; who wrote it; what induced you to make it; what consideration supported it? Answer fully.
37 Int. 4. Why was there such delay between the return of the execution in said case and the issuance of the writ of venditioni exponas?

Int. 5. Did you not purchase the judgment rendered in said case prior to or after the issuance of the execution or vendi. exponas; when and how, and in what manner was it paid for; who negotiated or effected the sale?

Int. 6. Were you present when the lands were sold under said writ of venditioni exponas; when were they sold, and by whom; was there any money paid by any person on the day of sale; if so, how much and to whom?

Int. 7. Who is now in possession of said Yazoo County lands; where have the said William B. Partee and Sarah D. Partee been living ever since said sale?

Int. 8. In what manner and when was the debt to Nelson, Lamphier & Co. secured by the trust deeds filed with this bill contracted; for what purpose; how did said James D. Partee come to owe them anything; who made the examination of the records of Yazoo County for

Your orators further state that the said firm of E. Dupassier & Co, after the execution of said trust-deed, suspended business, and your orator, A. Bidault, was legally appointed liquidator of their business, and is entitled to demand, have, receive, receipt for, and collect the said notes executed and delivered to them as aforesaid. Inasmuch, therefore, as your orators are without remedy, save in a court of chancery, they pray that the said William B. Partee, Sarah D. Partee, James D. Partee, Robert Bowman, Fountain Barksdale, Thomas A. Nelson, and James Stewart be made parties defendant hereto, and compelled to answer, but not under oath, all the allegations hereof, and particularly let them answer under oath the interrogatories hereto append' and propounded to them.

And on final hearing, your orators now offering to redeem said lands and pay off said Stewart judgment, if valid, pray that the said execution titles be vacated, set aside, and for nothing held, and your orators decreed to pay to said Stewart the amount of his said judgment, if to your honors it shall seem meet and proper, your orators in that event hereby offering to do so; that an account be taken and stated of
33 the amounts received, as well by said Stewart as by said James D. Partee, of the rents, issues, and profits of said lands from the day of the alleged sale of said lands until the final hearing, and that they be decreed to pay the same, the amount of said judgment being allowed said Stewart as a credit thereon; that the said deed by said Barksdale, trustee, to said Nelson be vacated and set aside; that an account be taken and stated of the amount due your orators upon said notes, and the amount due such other creditors secured thereby as may choose to come in and prove their claims thereunder, and the said William B. Partee and said other defendants decreed to pay the same on some future day to be named; that a new trustee be appointed in the place of said Bowman, and upon default made by said defendants of the amounts due your orators; that said new trustee be decreed to sell said Yazoo County lands, or so much thereof as may be of value sufficient to pay the amount due your orators; and that said defendants be enjoined from asserting title to said lands. Or, if mistaken in the relief sought, then for such other, further, and final relief and decree as to equity belongs, and your orators' case requires.

34 In the mean time your orators pray that a receiver be appointed to take possession of said Yazoo County lands and have the same from year to year under the orders of your honorable court, until the final hearing.

May it please your honors to grant your orators the gracious writ of subpœna, directed, &c., commanding, &c., and as in duty bound, your orators will ever pray, &c.

NUGENT & YERGER &
A. M. HARLOW,
Sol's for Compl't.

Interrogatories to Robert Bowman, esq.

Int. 1. State who were present at the sale made by the sheriff of Yazoo County under the writ of venditioni exponas issued in the case of James Stewart vs. William B. and Sarah D. Partee, and by whom, in person, the lands sold under that writ was bid in? How did it happen that part of the lands purchased were adjudicated to James Stewart for $5,200, and part to James D. Partee, for $520? What preliminary arrangements were made touching said sale? What negotiations were

made between you and your firm as attorneys for said Stewart, and the said Partees, or either of them? What induced these negotia-
35 tions? What, at the time of the sale, was the value of the lands adjudicated to said Stewart, and what that of the lands conveyed by the sheriff to James D. Partee? Was there not, prior to said sale, some agreement between your firm and the said William B. or James D. Partee, as to said sale and purchase? Was there any money paid on the day of the sale? If so, to whom, and how much?

Int. 2. For what purpose and why was the "release of errors" filed in the said case of Stewart vs. Partee? What induced it? At whose instance was it made? Upon what consideration and agreement?

Int. 3. Why did you not, and why did not said William B. Partee notify the complainants that the Yazoo County lands were to be sold under said writ of vendi. exponas? Did you not know that they would have paid the judgment before seeing the land sacrificed?

Int. 4. By whom and when was your fee in said case of Stewart v. Partee paid?

Int. 5. File copies of all letters from you or your said firm of Wilkinson & Bowman to said Stewart touching said judgment
36 and sale, and all from him to yourselves?

Int. 6. Why did you so long delay the issuance of said writ of venditioni exponas after the return of the execution issued in said case of Stewart vs. Partee and wife?

Int. to William B. Partee and James D. Partee.

Int. 1. Why did you not notify the complainants of the sale of the Yazoo County lands owned by M'r's Partee under the writ of venditioni exponas in case of Stewart vs. Partee, said county, so that they might have opportunity to pay the judgment?

Int. 2. What was the value of the lands at said sale which was adjudicated to said James D. Partee; how many plantations were comprised in them; how did it happen that the bid was exactly five hundred and fifty dollars; to whom and when was this money paid?

Int. 3. Did you not compromise the judgment of Stewart; if so, when; who conducted the matter for you; why was the release of errors filed in the case of Stewart vs. Partee & wife; who wrote it; what induced you to make it; what consideration supported it? Answer fully.

37 Int. 4. Why was there such delay between the return of the execution in said case and the issuance of the writ of venditioni exponas?

Int. 5. Did you not purchase the judgment rendered in said case prior to or after the issuance of the execution or vendi. exponas; when and how, and in what manner was it paid for; who negotiated or effected the sale?

Int. 6. Were you present when the lands were sold under said writ of venditioni exponas; when were they sold, and by whom; was there any money paid by any person on the day of sale; if so, how much and to whom?

Int. 7. Who is now in possession of said Yazoo County lands; where have the said William B. Partee and Sarah D. Partee been living ever since said sale?

Int. 8. In what manner and when was the debt to Nelson, Lamphier & Co. secured by the trust deeds filed with this bill contracted; for what purpose; how did said James D. Partee come to owe them anything; who made the examination of the records of Yazoo County for

them, when or before the trust deed was given; did they or their
38 attorneys inspect the the records at all; who were their attorneys?

Int. to James Stewart.

Int. 1. State how it happened that at the sales of lands made under the writ of venditioni exponas issued in your suit against William B. Partee and wife, part of the lands were adjudicated to you for $5,200, and part to James D. Stewart for $550; was not your judgment compromised; if so, when, and who effected it?

Int. 2. File all letters ever received by you from R. Bowman, esq., or Wilkinson & Bowman touching said case in any manner; and particularly as to the rendition of judgment in full, the levy on said lands and their sale.

Int. 3. Did you ever pay said Bowman & Wilkinson and Bowman a fee in said case; if so, when, and how much?

Int. 4. Did you not or did not your attorneys prior to said sales have some understanding with said William B. Partee or James D. Partee touching the same; and was it not under said understanding that the sales were made and the lands bought by said James D.; what was that understanding?

39 (Endorsed:) Filed this April 1st, 1873; also Exhibits A, B, C, D, E, F, G, H, I, J, K, L, M, and 30 notes of Partee and wife. Geo. T. Swann, clerk.

Exhibits Nos. 1 to 30.

Ex. 1.

$1,000.] YAZOO CITY, MISS., *November* 19, 1866.

On the first of January, 1872, I promise to pay to the order of Canal Bank of Louisiana, at the Citizens' Bank of Louisiana, in New Orleans, one thousand dollars, for value received, with interest at the rate of eight per cent. per annum after date until paid.

SARAH D. PARTEE.
W. B. PARTEE.

(Endorsed on back:)

STATE OF MISSISSIPPI,
Yazoo County:

I, M. A. Jenkins, clerk of the probate court of the county of Yazoo, hereby certify that the within note for $1,000.00 is secured by a deed in trust to the Canal Bank of Louisiana. Recorded in my office November 19, 1866.

M. A. JENKINS, *Clerk.*

[6 cents U. S. inter. rev. stamp.]

Filed with bill, 1 Ap'l, '73.

GEO. T. SWANN, *Cl'k.*

Ex. 2.

$1,000.] YAZOO CO., MISS., *November* 19, 1866.

On the first of January, 1868, I promise to pay to the order of Canal Bank of Louisiana, at the Citizens' Bank of Louisiana, in New Or-

40 leans, one thousand dollars, for value received, with interest at the rate of eight per cent. per annum after date until paid.

SARAH D. PARTEE.
W. B. PARTEE.

(Endorsed:)

STATE OF MISSISSIPPI,
Yazoo County:

I, M. A. Jenkins, clerk of the probate court of the county of Yazoo, hereby certify that the within note for $1,000.00 is secured by deed in trust to the Canal Bank of Louisiana. Recorded in my office, November 19, 1866.

M. A. JENKINS, *Clerk.*

[6 cents inter. rev. stamp.]

Filed with bill, 1 Ap'l, 1873.

GEO. T. SWANN, *Clk.*

Ex. 3.

$1,000.] YAZOO CO., MISS., *November* 19, 1866.

On the first day of January, 1869, I promise to pay to the order of Canal Bank of Louisiana, at the Citizens' Bank of Louisiana, in New Orleans, one thousand dollars, for value received, with interest at the rate of eight per cent. per annum after date until paid.

SARAH D. PARTEE.
W. B. PARTEE.

(Endorsed:)

STATE OF MISSISSIPPI,
Yazoo County:

I, M. A. Jenkins, clerk of the probate court of the county of Yazoo, hereby certify that the within note for $1,000.00 is secured by deed in trust to the Canal Bank of Louisiana. Recorded November 19th, 1866, in my office.

M. A. JENKINS, *Clerk.*

[6 cents U. S. inter. rev. stamp.]

Filed with bill, 1 Ap'l, '73.

GEO. T. SWANN, *Clerk.*

41 Ex. 4.

$1,000.] YAZOO CO., MISS., *November* 19, 1866.

On the first of January, 1871, I promise topay to the order of Canal Bank of Louisiana, at the Citizens' Bank of Louisiana, in New Orleans, one thousand dollars, for value received, with interest at the rate of eight per cent. per annum after date until paid.

SARAH D. PARTEE.
W. B. PARTEE.

(Endorsed:)

STATE OF MISSISSIPPI,
Yazoo County:

I, M. A. Jenkins, clerk of the probate court of the county of Yazoo, hereby certify that the within note for $1,000.00 is secured by deed in

rust to the Canal Bank of Louisiana. Recorded in my office November, 19th, 1866.

M. A. JENKINS, *Clerk.*

[6 cents U. S. inter. rev. stamps.]

Filed with o. bill, 1 Ap'l, 1'73.

G. T. SWANN, *Clk.*

Ex. 5.

$1,000.] YAZOO CO., MISS., *November* 19, 1866.

On the first of January, 1870, I promise to pay to the order of Canal Bank of Louisiana, at the Citizens' Bank of Louisiana, in New Orleans, one thousand dollars, for value received, with interest at the rate of eight per cent. per annum after date until paid.

SARAH D. PARTEE.
W. B. PARTEE.

(Endorsed:)

STATE OF MISSISSIPPI,
Yazoo County:

I, M. A. Jenkins, clerk of the probate court of the county of Yazoo, hereby certify that the within note for $1,000.00 is secured by
42 deed in trust to the Canal Bank of Louisiana. Recorded in my office November 19th, 1866.

M. A. JENKINS, *Clk.*

[6 cents U. S. inter. rev. stamps.]

Filed with bill, 1 Ap'l, '73.

GEO. T. SWANN, *Clk.*

Ex. 6.

$900.] YAZOO CO., MISS., *November* 19, 1866.

On the first of January, 1870, I promise to pay to the order of J. Marsh Denman, at the Citizens' Bank of Louisiana, in New Orleans, nine hundred dollars, for value received, with interest at the rate of eight per cent. per annum after date until paid.

SARAH D. PARTEE.
W. B. PARTEE.

(Endorsed:)

STATE OF MISSISSIPPI,
Yazoo County:

I, M. A. Jenkins, clerk of the probate court of the county of Yazoo, do hereby certify that the within note for nine hundred dollars, secured by deed in trust to J. M. Denman, recorded in my office Nov. 19th, 1866.

M. A. JENKINS, *Clk,*
By M. W. SMITH, *D. C.*

[6 cents U. S. inter. rev. stamps.]

Filed 1 Ap'l, 1873, with bill.

GEO. T. SWANN, *Clk.*

Ex. 7.

$900.] YAZOO CO., MISS., *November* 19, 1866.

On the first of January, 1868, I promise to pay to the order of J. Marsh Denman, at the Citizens' Bank of Louisiana, in New Orleans,

nine hundred dollars, for value received, with interest at the rate
43 of eight per cent. per annum after date until paid.

SARAH D. PARTEE.
W. B. PARTEE.

(Endorsed:)

STATE OF MISS.,
Yazoo County:

I, M. A. Jenkins, clerk of the probate court of the county of Yazoo, do hereby certify that the within note for nine hundred dollars is secured to J. M. Denman by deed in trust, recorded in my office Nov. 19, 1866.

M. A. JENKINS, *Clk*,
By M. W. SMITH, *D. C.*

[6 cents U. S. inter. rev. stamps.]

Filed with o. bill 1 Ap'l, '73.

GEO. T. SWANN, *Clk.*

Ex. 8.

$900.] YAZOO CO., MISS., *November* 19, 1866.

On the first of January, 1869, I promise to pay to the order of J. Marsh Denman, at the Citizens' Bank of Louisiana, in New Orleans, nine hundred dollars, for value received, with interest at the rate of eight per cent. per annum after date until paid.

SARAH D. PARTEE.
W. B. PARTEE.

(Endorsed:)

STATE OF MISS.,
Yazoo County:

I, M. A. Jenkins, clerk of the probate court of the county of Yazoo, do hereby certify the within note for nine hundred dollars is secured by deed in trust to J. M. Denman, recorded in my office Nov. 19th, 1866.

M. A. JENKINS, *Clk.*,
By M. W. SMITH, *D. C.*

[6 cents U. S. inter. rev. stamps.]

Filed with bill 1 April, 1873.

GEO. T. SWANN, *Clk.*

44 Ex. 9.

$900.] YAZOO CO., MISS., *November* 19, 1866.

On the first of January, 1872, I promise to pay to the order of J Marsh Denman, at the Citizens' Bank of Louisiana, in New Orleans nine hundred dollars, for value received, with interest at the rate o eight per cent. per annum after date until paid.

SARAH D. PARTEE.
W. B. PARTEE.

(Endorsed:)

STATE OF MISSISSIPPI,
Yazoo County:

I, M. A. Jenkins, clerk of the probate court of the county of Yazoo, do hereby certify that the within note for nine hundred dollars is secured by deed in trust to J. M. Denman, recorded in my office Nov. 19, 1866.

M. A. JENKINS, *Clk*,
By M. W. SMITH, *D. C.*

[6 cents U. S. inter. rev. stamps.]

Filed 1 Ap'l, '73, with bill.

G. T. SWANN, *Clk.*

Ex. 10.

$900.] YAZOO CO., MISS., *November* 19, 1866.

On the first of January, 1871, I promise to pay to *to* the order of J. Marsh Denman, at the Citizens' Bank of Louisiana, in New Orleans, nine hundred dollars, for value received, with interest at the rate of eight per cent. per annum after date until paid.

SARAH D. PARTEE.
W. B. PARTEE.

(Endorsed:)

STATE OF MISS.,
Yazoo County:

I, M. A. Jenkins, clerk of the probate court of the county of
45 Yazoo, do hereby certify that the within note for nine hundred dollars is secured by deed in trust to J. M. Denman, recorded in my office Nov'r 19, 1866.

M. A. JENKINS, *Clk*,
By M. W. SMITH, *D. C.*

Filed with bill 1 Ap'l, '73.

G. T. SWANN, *Clk.*

Ex. 11.

$720.] YAZOO CO., MISS., *November* 19, 1866.

On the first of January, 1871, I promise to pay to the order of E. Dupasseir & Co., at the Citizens' Bank of Louisiana, in New Orleans, dollars, for value received, with interest at the rate of eight per cent. per annum after date until paid.

SARAH D. PARTEE.
W. B. PARTEE.

(Endorsed:)

STATE OF MISSISSIPPI,
Yazoo County:

I, M. A. Jenkins, clerk of the probate court of the county of Yazoo, do hereby certify that the within note for seven hundred and twenty dollars is secured by deed in trust to E. Dupasseir & Co. Recorded in my office Nov. 19, 1866.

M. A. JENKINS, *Clerk*,
By M. W. SMITH, *D. C.*

[6 cents U. S. inter. rev. stamps.]

Filed 1 Ap'l, '73, with bill.

GEO. T. SWANN, *Clk.*

Ex. 12.

$720.] YAZOO CO., MISS., *November* 19, 1866.

On the first of January, 1870, I promise to pay to the order of E. Dupasseir & Co., at the Citizens' Bank of Louisiana, in New Orleans,
46 seven hundred and twenty dollars, for value received, with interest at the rate of eight per cent. per annum after date until paid.

SARAH D. PARTEE.
W. B. PARTEE.

(Endorsed:)

STATE OF MISSISSIPPI,
Yazoo County:

I, M. A. Jenkins, clerk of the probate court of the county of Yazoo, do hereby certify that the within note for seven hundred & twenty dollars is secured by deed in trust to E. Dupasseir & Co. Recorded in my office Nov'r 19, 1866.

M. A. JENKINS, *Clk*,
By M. W. SMITH, *D. C.*

[6 cents U. S. inter. rev. stamps.]
Filed 1 Ap'l, '73, with o. bill.

GEO. T. SWANN, *Clk.*

Ex. 13.

$720.] YAZOO CO., MISS., *November* 19, 1866.

On the first of January, 1872, I promise to pay to the order of E. Dupasseir & Co., at the Citizens' Bank of Louisiana, in New Orleans, seven hundred and twenty dollars, for value received, with interest at the rate of eight per cent. per annum after date until paid.

SARAH D. PARTEE.
W. B. PARTEE.

(Endorsed:)
STATE OF MISSOURI,
Yazoo County:

I, M. A. Jenkins, clerk of the probate court of the county of Yazoo, do hereby certify that the within note for seven hundred and
47 twenty dollars is secured by deed in trust to E. Dupasseir & Co. Recorded in my office Nov. 19, 1866.

M. A. JENKINS, *Clerk*,
By M. W. SMITH, *D. C.*

[6 cents U. S. inter. rev. stamps]
Filed with bill 1 Ap'l, '73.

GEO. T. SWANN, *Clk.*

Ex. 14.

$720.] YAZOO CO., MISS., *November* 19, 1866.

On the first of January, 1868, I promise to pay to the order of E. Dupasseir & Co., at the Citizens' Bank of Louisiana, in New Orleans, seven hundred and twenty dollars, for value received, with interest at the rate of eight per cent. per annum after date until paid.

SARAH D. PARTEE.
W. B. PARTEE.

(Endorsed:)
STATE OF MISSISSIPPI,
Yazoo County:

I, M. A. Jenkins, clerk of the probate court of the county of Yazoo, do hereby certify that the within note for seven hundred & twenty dollars is secured by deed in trust to E. Dupasseir & Co. Recorded in my office Nov'r 19, 1866.

M. A. JENKINS, *Clk.*
By M. W. SMITH, *D. C.*

[6 cents U. S. inter. rev. stamps.]
Filed with bill 1 Ap'l, '73.

GEO. T. SWANN, *Clk.*

EX. 15.

$720.] YAZOO CO., MISS., *November* 19, 1866.

On the first of January, 1869, I promise to pay to the order of E. Dupasseir & Co., at the Citizens' Bank of Louisiana, in New Orleans, seven hundred and twenty dollars, for value received, with interest at
48 the rate of eight per cent. per annum after date until paid.

SARAH D. PARTEE.
W. B. PARTEE.

(Endorsed:)

STATE OF MISSISSIPPI,
Yazoo County:

I, M. A. Jenkins, clerk of the probate court of the county of Yazoo, do hereby certify that the within note for seven hundred and twenty dollars is secured by deed in trust, recorded in my office, to E. Dupasseir & Co., Nov. 19, 1866.

M. A. JENKINS, *Clk*,
By M. W. SMITH, *D. C.*

[6 cents U. S. inter. rev. stamps.]

Filed 1 Ap'l, '73, with bill.

GEO. T. SWANN, *Clk.*

EX. 16.

$441 $\frac{50}{100}$.] YAZOO CO., MISS., *November* 19, 1866.

On the first of January, 1869, I promise to pay to the order of Union Bank of Louisiana, at the Citizens' Bank of Louisiana, in New Orleans, four hundred and forty-one $\frac{50}{100}$ dollars, for value received, with interest at the rate of eight per cent. per annum after date until paid.

SARAH D. PARTEE.
W. B. PARTEE.

(Endorsed:)

STATE OF MISSISSIPPI,
Yazoo County:

I, M. A. Jenkins, clerk of the probate court of the county of Yazoo, do hereby certify that the within note for $441.50 is secured by deed in trust to Union Bank. Recorded in my office Nov. 19, 1866.

M. A. JENKINS, *Clk*,
By M. W. SMITH, *D. C.*

[6 cents U. S. inter. rev. stamps.]

Filed with bill 1 Ap'l, '73.

GEO. T. SWANN, *Clerk.*

49 EX. 17.

$441.50.] YAZOO CO., MISS., *November* 19, 1866.

On the first of January, 1868, I promise to pay to the order of Union Bank of Louisiana, at the Citizens' Bank of Louisiana, in New Orleans, four hundred and $\frac{50}{100}$ dollars, for value received, with interest at the rate of eight per annum after date until paid.

SARAH D. PARTEE.
W. B. PARTEE.

(Endorsed:)

STATE OF MISSISSIPPI,
Yazoo County:

I, M. A. Jenkins, clerk of the probate court of the county of Yazoo, do hereby certify that the within note for $441.50 is secured by deed in trust to Union Bank, recorded in my office Nov. 19, 1866.

M. A. JENKINS, *Clerk*,
By M. W. SMITH, *D. C.*

[6 cents U. S. inter. rev. stamps.]

Filed with bill 1 Ap'l, '73.

GEO. T. SWANN, *Clerk.*

Ex. 18.

$441.50.] YAZOO CO., MISS., *November* 19, 1866.

On the first of January, 1870, I promise to pay to the order of Union Bank of Louisiana, at the Citizens' Bank of Louisiana, in New Orleans, four hundred and forty-one $\frac{50}{100}$ dollars, for value received, with interest at the rate of eight per cent. per annum after date until paid.

SARAH D. PARTEE.
W. B. PARTEE.

(Endorsed:)
STATE OF MISSISSIPPI,
Yazoo County:

50 I, M. A. Jenkins, clerk of the probate court of the county of Yazoo, do hereby certify that the within note for $441.50 is secured by deed in trust to the Union Bank, recorded in my office Nov. 19, 1866.

M. A. JENKINS, *Clerk*,
By M. W. SMITH, *D. C.*

[6 cents U. S. int. rev. stamps.]

Filed 1 Ap'l, '73, with bill.

G. F. SWANN, *Clk.*

Ex. 19.

$441.50.] YAZOO CO., MISS., *November* 19, 1866.

On the first of January, 1871, I promise to pay to the order of Union Bank of Louisiana, at the Citizens' Bank of Louisiana, in New Orleans, four hundred and forty-one $\frac{50}{100}$ dollars, for value received, with interest at the rate of eight per cent. per annum after date until paid.

SARAH D. PARTEE.
W. B. PARTEE.

(Endorsed:)
STATE OF MISSISSIPPI,
Yazoo County:

I, M. A. Jenkins, clerk of the probate court of the county of Yazoo, do hereby certify that the within note for $441.50 is secured by a deed in trust, recorded in my office, to the Union Bank, Nov. 19, 1866.

M. A. JENKINS, *Clerk*,
By M. W. SMITH, *D. C.*

[6 cents U. S. inter. rev. stamps.]

Filed 1 Ap'l, '73, with bill.

GEO. T. SWANN, *Clk.*

Ex. 20.

$441.50.] YAZOO CO., MISS., *November* 19, 1866.

On the first of January, 1872, I promise to pay to the order of Union Bank of Louisiana, at the Citizens' Bank of Louisiana, in New
51 Orleans, four hundred and forty-one $\frac{50}{100}$ dollars, for value received, with interest at the rate of eight per cent. per annum after date until paid.

SARAH D. PARTEE.
W. B. PARTEE.

(Endorsed:)

STATE OF MISSISSIPPI,
Yazoo County:

I, M. A. Jenkins, clerk of the probate court of the county of Yazoo, do hereby certify that the within note for 441.50 is secured by deed in trust to Union Bank, recorded in my office Nov. 19, 1866.

M. A. JENKINS, *Clerk*,
By M. W. SMITH, *D. C.*

[6 cents U. S. inter. rev. stamps.]

Filed with bill 1 Ap'l, 1873.

GEO. T. SWANN, *Clk.*

Ex. 21.

$423.] YAZOO CO., MISS., *November* 19, 1866.

On the first of January, 1871, I promise to pay to the order of Union Bank of Louisiana, at the Citizens' Bank of Louisiana, in New Orleans, four hundred and twenty-three dollars, for value received, with interest at the rate of eight per cent. per annum after date until paid.

SARAH D. PARTEE.
W. B. PARTEE.

(Endorsed:)

STATE OF MISSISSIPPI,
Yazoo County:

I, M. A. Jenkins, clerk of the probate court of the county of Yazoo, do hereby certify that the within note for four hundred and twenty-three dollars is secured by deed in trust to Louisiana State Bank,
52 recorded Nov. 19, 1866, in my office.

M. A. JENKINS, *Clerk*,
By M. W. SMITH, *D. C.*

[6 cents U. S. inter. rev. stamps]

Filed with bill 1 Ap'l, '73.

GEO. T. SWANN, *Clerk.*

Ex. 22.

$423.] YAZOO CO., MISS., *November* 19, 1866.

On the first of January, 1870, I promise to pay to the order of Union Bank of Louisiana, at the Citizens' Bank of Louisiana, in New Orleans, four hundred and twenty-three dollars, for value received, with interest at the rate of eight per cent. per annum after date until paid.

SARAH D. PARTEE.
W. B. PARTEE.

(Endorsed:)

STATE OF MISSISSIPPI,
Yazoo County:

I, M. A. Jenkins, clerk of the probate court of the county of Yazoo, do hereby certify that the within note for four hundred & twenty-three dollars is secured by deed in trust to Louisiana State Bank, recorded Nov. 19, 1866, in my office.

M. A. JENKINS, *Clk*,
By M. W. SMITH, *D. C.*

[6 cents U. S. inter. rev. stamps.]
Filed with bill 1 April, '73.

GEO. T. SWANN, *Clk.*

Ex. 23.

$423.] YAZOO CO., MISS., *November* 19, 1866.

On the first of January, 1869, I promise to pay to the order of Union Bank of Louisiana, at the Citizens' Bank of Louisiana, in New
53 Orleans, four hundred and twenty-three dollars, for value received, with interest at the rate of eight per cent. per annum after date until paid.

SARAH D. PARTEE.
W. B. PARTEE.

(Endorsed:)

STATE OF MISSISSIPPI,
Yazoo County:

I, M. A. Jenkins, clerk of the probate court of the county of Yazoo, do hereby certify that the within note for four hundred and twenty-three dollars is secured by deed in trust to Louisiana State Bank, recorded in my office Nov. 19, 1866.

M. A. JENKINS, *Clk*,
By M. W. SMITH, *D. C.*

[6 cents U. S. Inter. Rev. stamps.]
Filed with bill, 1 Ap'l, '73.

GEO. T. SWANN, *Clk.*

Ex. 24.

$423.] YAZOO CO., MISS., *November* 19, 1866.

On the first of January, 1868, I promise to pay to the order of Union Bank of Louisiana, at the Citizens' Bank of Louisiana in New Orleans, four hundred and twenty-three dollars for value received, with interest at the rate of eight per cent. per annum after date until paid.

SARAH D. PARTEE.
W. B. PARTEE.

(Endorsed:)

STATE OF MISSISSIPPI,
Yazoo County:

I, M. A. Jenkins, clerk of the probate court of the county of Yazoo, do hereby certify that the within note for four hundred and twenty-
54 three dollars is secured by deed in trust to Louisiana State Bank, recorded in my office Nov'r 19, 1866.

M. A. JENKINS, *Clk*,
By M. W. SMITH, *D. C.*

[6 cents U. S. inter. rev. stamps.]
Filed with bill, 1 April, 1873.

GEO. T. SWANN, *Clk.*

Ex. 25.

$423.] YAZOO CO., MISS., *November* 19, 1866.

On the first of January, 1872, I promise to pay to the order of Union Bank of Louisiana, at the Citizens' Bank of Louisiana in New Orleans, four hundred and twenty-three dollars, for value received, with interest at the rate of eight per cent. per annum after date until paid.

SARAH D. PARTEE.
W. B. PARTEE.

(Endorsed:)

STATE OF MISSISSIPPI,
Yazoo County:

I, M. A. Jenkins, clerk of the probate court of the county of Yazoo, do hereby certify that the within note for four hundred and twenty-three dollars is secured by a deed in trust to Louisiana State Bank, recorded Nov. 19, 1866, in my office.

M. A. JENKINS, *Clk*,
By M. W. SMITH, *D. C.*

[6 cents U. S. inter. rev. stamps.]

Filed with o. bill, 1 Ap'l, '73.

GEO. T. SWANN, *Clk.*

Ex. 26.

$400.] YAZOO CO., MISS., *November* 19, 1866.

On the first of January, 1870, I promise to pay to the order of
55 Crescent City Bank, at the Citizens' Bank of Louisiana in New Orleans, four hundred dollars for value received, with interest at the rate of eight per cent. per annum after date until paid.

SARAH D. PARTEE.
W. B. PARTEE.

(Endorsed:)

STATE OF MISSISSIPPI,
Yazoo County:

I, M. A. Jenkins, clerk of the probate court of the county of Yazoo, do hereby certify that the within note for four hundred dollars is secured by deed in trust to Crescent City Bank, recorded in my office, Nov'r 19, 1866.

M. A. JENKINS, *Clerk*,
By M. W. SMITH, *D. C.*

[6 cents U. S. inter. rev. stamps.]

Protest.

[5 cents inter. rev. stamp.]

UNITED STATES OF AMERICA,
State of Louisiana:

By this public instrument of protest be it known, that on this fourth day of January, in the year one thousand eight hundred and seventy, at the request of the cashier of & holder of the Crescent City Bank, holder of the original, whereof a true copy is in the reverse hereof written, I, Edward Barnett, a notary public in and for the city and parish of New Orleans, State of Louisiana, duly commissioned and sworn, by my deputy, Marcel T. Ducross, presented said note during banking

hours to the proper bookkeeper, note-clerk, & paying teller of the Citizens' Bank of Louisiana, where the same is made payable,
56 demanded of them payment thereof, and was by them answered that no funds had been deposited there to pay the same.

Whereupon, I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the drawer or maker of the said note, as against all others whom it doth or may concern, for all exchange, re-exchange, damages, costs, charges, and interests, suffered or to be suffered, for want of payment of the said note.

Thus done and protested in the presence of Marcel T. Ducross and Joseph W. Jones, both of this city, witnesses.

In testimony whereof, I grant these presents under my signature and the impress of my seal of office, at the city of New Orleans, on the day and year first above written.

[SEAL.] EDW'D BARNETT,
Notary Public.

Copy on back of protest.

$400.] YAZOO CO., MISS., *November* 19, 1866.

On the first of January, 1870, I promise to pay to the order of at the Citizens' Bank of Louisiana in New Orleans, four hundred dollars for value received, with interest at the rate of eight per cent. per annum after date until paid.

SARAH D. PARTEE.
W. B. PARTEE.

STATE OF MISSISSIPPI,
Yazoo County:

57 I, M. A. Jenkins, clerk of the probate court of the county of Yazoo, do hereby certify that the within note for four hundred dollars is secured by deed in trust to Crescent City Bank, recorded in my office Nov'r 19, 1866.

M. A. JENKINS, *Clk,*
By M. W. SMITH, *D. C.*

(Endorsed:) Filed with bill 1 April, '73. Geo. T. Swann, cl'k.

Ex. 27.

$400.] YAZOO CO., MISS.,
November 19, 1866.

On the first of January, 1871, I promise to pay to the order of Crescent City Bank, at the Citizen's Bank of Louisiana, in New Orleans, four hundred dollars, for value received, with interest at the rate of eight per cent. per annum after date until paid.

SARAH D. PARTEE.
W. B. PARTEE.

(Endorsed:)

STATE OF MISSISSIPPI,
Yazoo County:

I, M. A. Jenkins, clerk of the probate court of the county of Yazoo, do hereby certify that the within note for four hundred dollars is secured to Crescent City Bank by deed in trust, recorded in my office Nov. 19, 1866.

M. A. JENKINS, *Clerk,*
By M. W. SMITH, *D. C.*

[6 cents U. S. inter. rev. stamps.]

Protest.

5 cents U. S. inter. rev. stamp.]

UNITED STATES OF AMERICA,
State of Louisiana:

By this public instrument of protest be it known, that on this fourth day of January, in the year one thousand eight hundred and sev-
58 enty-one, at the request of the cashier of and holder for the Crescent City Bank, holder of the original note, whereof a true copy is on the reverse hereof written, I, Edward Barnett, a notary public in and for the city and parish of New Orleans, State of Louisiana, duly commissioned and sworn by my deputy, Marcel T. Ducros presented said note during banking hours to the proper bookkeeper, note-clerk & paying-teller of the Citizens' Bank of Louisiana in this city, at their banking-house, where the same is made payable, demanded of them payment thereof and was by them answered that no funds had been deposited there to pay the same.

Whereupon, I, the said notary, at the request aforesaid, did protest, and by these presents, do publicly and solemnly protest, as well against the drawer or maker of the said note, as against all others whom it doth or may concern, for all exchange, re-exchange, costs, charges, and interests, suffered or to be suffered, for want of payment of the said note.

Thus done and protested in the presence of Marcel T. Ducros and Joseph W. Jones, both of this city, witnesses.

In testimony whereof I grant these presents under my signature and the impress of my seal of office, at the city of New Orleans, on the
59 day and *and* year first above written.

[SEAL.] EDW'D BARNETT,
Notary Public.

Copy on back of protest.

$400.] YAZOO CO., MISS.,
November 19, 1866.

On the first of January, 1871, I promise to pay to the order of , at the Citizens' Bank of Louisiana, in New Orleans, four hundred dollars, for value received, with interest at the rate of eight per cent. per annum after date until paid.

SARAH D. PARTEE.
W. B. PARTEE.

STATE OF MISSISSIPPI,
Yazoo County:

I, M. A. Jenkins, clerk of the probate court of the county of Yazoo, do hereby certify that the within note for four hundred dollars is secured to Crescent City Bank by deed in trust, recorded in my office on Nov. 19, 1866.

M. A. JENKINS, *Clerk*,
By M. W. SMITH, *D. C.*

(Endorsed:) Filed with bill 1 Ap'l, '73. Geo. T. Swann, cl'k.

Ex. 28.

$400.] YAZOO CO., MISS.,
November 19, 1866.

On the first of January, 1868, I promise to pay to the order of Cres-

cent City Bank of New Orleans, La., at the Citizens' Bank of Louisiana, in New Orleans, four hundred dollars for value received, with interest at the rate of eight per cent. per annum after date until paid.

SARAH D. PARTEE.
W. B. PARTEE.

60 (Endorsed:)

STATE OF MISSISSIPPI,
Yazoo County:

I, M. A. Jenkins, clerk of the probate court of the county of Yazoo, do hereby certify that the within note for four hundred dollars is secured by deed in trust to Crescent City Bank, recorded in my office Nov. 19, 1866.

M. A. JENKINS, *Clk*,
By M. W. SMITH, *D. C.*

[6 cents U. S. inter. rev. stamps.]

Protest.

[Internal rev. stamps for twenty-five cents affixed to original protest and cancelled.]

UNITED STATES OF AMERICA,
State of Louisiana:

By this public instrument of protest, be it known, that on this fourth day of January, in the year one thousand eight hundred and sixty-eight, at the request of the cashier of & holder for the Crescent City Bank, of this city, holder of the original note, whereof a true copy is on the reverse hereof written, I, Edward Barnett, a notary public in and for the city and parish of New Orleans, Louisiana, duly commissioned and sworn, by my deputy Marcel T. Ducros, presented said note during banking-hours to the proper bookkeeper and paying-teller of the Citizens' Bank of Louisiana in this city, where the same is made payable, demanded of them payment thereof, & was answered that the same would not be paid for want of funds of the drawers, & that no
61 money had been deposited there to pay the same.

Whereupon I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the drawer or maker of the said note as against all others whom it doth or may concern, for all exchange, re-exchange, damages, costs, charges, and interests suffered or to be suffered for want of payment of the said note.

Thus done and protested in the presence of Marcel T. Ducros and Adolphe A. Lewis, both of this city, witnesses.

In testimony whereof I grant these presents, under my signature and the impress of my seal of office, at the city of New Orleans, on the day and year first above written.

[SEAL.] EDW'D BARNETT,
Notary Public.

[5-cents U. S. inter. rev. stamp.]

Copy on back of protest.

$400] YAZOO CO., MISS., *November* 19, 1866.

On the first of January, 1868, I promise to pay to the order of Crescent City Bank, of New Orleans, La. at the Citizens' Bank of Louisiana in New Orleans, four hundred dollars for value received, with interest at the rate of eight per cent. per annum after date until paid.

SARAH D. PARTEE.
W. B. PARTEE.

(Endorsed:)

Protest.

5 cents U. S. inter. rev. stamp.]

UNITED STATES OF AMERICA,
State of Louisiana:

By this public instrument of protest be it known, that on this fourth day of January, in the year one thousand eight hundred and sev-
58 enty-one, at the request of the cashier of and holder for the Crescent City Bank, holder of the original note, whereof a true copy is on the reverse hereof written, I, Edward Barnett, a notary public in and for the city and parish of New Orleans, State of Louisiana, duly commissioned and sworn by my deputy, Marcel T. Ducros presented said note during banking hours to the proper bookkeeper, note-clerk & paying-teller of the Citizens' Bank of Louisiana in this city, at their banking-house, where the same is made payable, demanded of them payment thereof and was by them answered that no funds had been deposited there to pay the same.

Whereupon, I, the said notary, at the request aforesaid, did protest, and by these presents, do publicly and solemnly protest, as well against the drawer or maker of the said note, as against all others whom it doth or may concern, for all exchange, re-exchange, costs, charges, and interests, suffered or to be suffered, for want of payment of the said note.

Thus done and protested in the presence of Marcel T. Ducros and Joseph W. Jones, both of this city, witnesses.

In testimony whereof I grant these presents under my signature and the impress of my seal of office, at the city of New Orleans, on the
59 day and *and* year first above written.

[SEAL.] EDW'D BARNETT,
Notary Public.

Copy on back of protest.

$400.] YAZOO CO., MISS.,
November 19, 1866.

On the first of January, 1871, I promise to pay to the order of , at the Citizens' Bank of Louisiana, in New Orleans, four hundred dollars, for value received, with interest at the rate of eight per cent. per annum after date until paid.

SARAH D. PARTEE.
W. B. PARTEE.

STATE OF MISSISSIPPI,
Yazoo County:

I, M. A. Jenkins, clerk of the probate court of the county of Yazoo, do hereby certify that the within note for four hundred dollars is secured to Crescent City Bank by deed in trust, recorded in my office on Nov. 19, 1866.

M. A. JENKINS, *Clerk*,
By M. W. SMITH, *D. C.*

(Endorsed:) Filed with bill 1 Ap'l, '73. Geo. T. Swann, cl'k.

Ex. 28.

$400.] YAZOO CO., MISS.,
November 19, 1866.

On the first of January, 1868, I promise to pay to the order of Cres-

cent City Bank of New Orleans, La., at the Citizens' Bank of Louisiana, in New Orleans, four hundred dollars for value received, with interest at the rate of eight per cent. per annum after date until paid.

SARAH D. PARTEE.
W. B. PARTEE.

60 (Endorsed:)

STATE OF MISSISSIPPI,
Yazoo County:

I, M. A. Jenkins, clerk of the probate court of the county of Yazoo, do hereby certify that the within note for four hundred dollars is secured by deed in trust to Crescent City Bank, recorded in my office Nov. 19, 1866.

M. A. JENKINS, *Clk*,
By M. W. SMITH, *D. C.*

[6 cents U. S. inter. rev. stamps.]

Protest.

[Internal rev. stamps for twenty-five cents affixed to original protest and cancelled.]

UNITED STATES OF AMERICA,
State of Louisiana:

By this public instrument of protest, be it known, that on this fourth day of January, in the year one thousand eight hundred and sixty-eight, at the request of the cashier of & holder for the Crescent City Bank, of this city, holder of the original note, whereof a true copy is on the reverse hereof written, I, Edward Barnett, a notary public in and for the city and parish of New Orleans, Louisiana, duly commissioned and sworn, by my deputy Marcel T. Ducros, presented said note during banking-hours to the proper bookkeeper and paying-teller of the Citizens' Bank of Louisiana in this city, where the same is made payable, demanded of them payment thereof, & was answered that the same would not be paid for want of funds of the drawers, & that no
61 money had been deposited there to pay the same.

Whereupon I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the drawer or maker of the said note as against all others whom it doth or may concern, for all exchange, re-exchange, damages, costs, charges, and interests suffered or to be suffered for want of payment of the said note.

Thus done and protested in the presence of Marcel T. Ducros and Adolphe A. Lewis, both of this city, witnesses.

In testimony whereof I grant these presents, under my signature and the impress of my seal of office, at the city of New Orleans, on the day and year first above written.

[SEAL.] EDW'D BARNETT,
Notary Public.

[5-cents U. S. inter. rev. stamp.]

Copy on back of protest.

$400] YAZOO CO., MISS., *November* 19, 1866.

On the first of January, 1868, I promise to pay to the order of Crescent City Bank, of New Orleans, L'a. at the Citizens' Bank of Louisiana in New Orleans, four hundred dollars for value received, with interest at the rate of eight per cent. per annum after date until paid.

SARAH D. PARTEE.
W. B. PARTEE.

(Endorsed:)

STATE OF MISSISSIPPI,
Yazoo County:

62 I, M. A. Jenkins, clerk of the probate court of Yazoo, do hereby certify that the within note for four hundred dollars is secured by deed in trust to Crescent City Bank, recorded Nov. 19, 1866, in my office.

M. A. JENKINS, *Clerk*,
By M. W. SMITH, *D. C.*

(Endorsed:) Filed with bill 1 Ap'l, '73. Geo. T. Swann, clerk.

Ex. 29.

$400.] YAZOO CO., MISS., *November* 19, 1866.

On the first of January, 1872, I promise to pay to the order of Crescent City Bank, at the Citizens' Bank of Louisiana, in New Orleans, four hundred dollars, for value received, with interest at the rate of eight per cent. per annum after date until paid.

SARAH D. PARTEE.
W. B. PARTEE.

(Endorsed:)
STATE OF MISSISSIPPI,
Yazoo County:

I, M. A. Jenkins, clerk of the probate court of the county of Yazoo, do hereby certify that the within note for four hundred dollars is secured by deed in trust to Crescent City Bank, recorded in my office Nov. 19, 1866.

[SEAL.] M. A. JENKINS, *Clk*,
By M. W. SMITH, *D. C.*

[6 cents U. S. inter. rev. stamps.]

Protest.

[5 cents U. S. inter. rev. stamp.]

UNITED STATES OF AMERICA,
State of Louisiana:

By this public instrument of protest be it known that on this fourth day of January, in the year one thousand eight hundred and
63 seventy-two, at the request of the cashier and holder for the Crescent City Bank, holder of the original note, whereof a true copy is on the reverse hereof written, I, Marcel T. Ducros, a notary public in and for the city and parish of New Orleans, State of Louisiana aforesaid, duly commissioned and sworn, presented said note during banking-hours to the proper bookkeeper, note-clerk, paying-teller, and cashier of the Citizens' Bank of Louisiana at their banking-house in this city, where the same is made payable, demanded of them payment thereof, & was by them answered that no funds had been deposited there to pay the same, & that they would not pay said note.

Whereupon I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the drawer or maker of the said note as against all others whom it doth or may concern, for all exchange, re-exchange, costs, charges, and interests suffered or to be suffered for want of payment of the said note.

Thus done and protested in the presence of Joseph W. Jones and John J. Barnett, witnesses.

In testimony whereof I grant these presents under my signature and the impress of my seal of office at the city of New Orleans, on the
64 day and year first above written.
[SEAL.] W. T. DUCROSS,
Not. Pub.

Copy on back of protest.

$400.] YAZOO CO., MISS., *November* 19, 1866.

On the first of January, 1872, I promise to pay to the order of at the Citizens' Bank of Louisiana, in New Orleans, four hundred dollars, for value received, with interest at the rate of eight per cent. per annum after date until paid.

SARAH D. PARTEE.
W. B. PARTEE.

(Endorsed:)
STATE OF MISSISSIPPI,
Yazoo County:

I, M. A. Jenkins, clerk of the probate court of the county of Yazoo, do hereby certify that the within note for four hundred dollars is secured by deed in trust to Crescent City Bank, recorded in my office Nov. 19, 1866.

M. A. JENKINS, *Clk*,
By M. W. SMITH, *D. C.*

(Endorsed:) Filed with bill 1 Ap'l, '73. Geo. T. Swann, cl'k.

EX. 30.

$400.] YAZOO CO., MISS., *November* 19, 1866.

On the first of January, 1869, I promise to pay to the order of Crescent City Bank, at the Citizens' Bank of Louisiana, in New Orleans, four hundred dollars for value received, with interest at the rate of eight per cent. per annum after date until paid.

SARAH D. PARTEE.
W. B. PARTEE.

65 (Endorsed:)
STATE OF MISSISSIPPI,
Yazoo County:

I, M. A. Jenkins, clerk of the probate court of the county of Yazoo, do hereby certify that the within note for four hundred dollars is secured by deed in trust to Crescent City Bank, recorded Nov'r 19, 1866, in my office.
[SEAL.] M. A. JENKINS, *Clk*,
By M. W. SMITH, *D. C.*

[6 cents U. S. intei.rev. stamps.]

Protest.

[U. S. inter. rev. stamp, 5 cents.]

UNITED STATES OF AMERICA,
State of Louisiana:

By this public instrument of protest, be it known that on this fourth day of January, in the year one thousand eight hundred and sixty-nine,

at the request of the cashier of & holder for the Crescent City Bank, holder of the original note, whereof a true copy is on the reverse hereof written, I, Edward Barnett, a notary public in and for the city and parish of New Orleans, State of Louisiana, duly commissioned and sworn, by my deputy, Marcel T. Ducros, presented said note during banking hours to the proper bookkeeper, note-clerk, and paying-teller of the Citizens' Bank of Louisiana, in this city, where the same is made payable, demanded of them payment thereof, & was by them answered that the same would not be paid for want of funds of the drawers.

Whereupon I, the said notary, at the request aforesaid, did
66 protest, and by these presents do publicly and solemnly protest, as well against the drawer or maker of the said note, as against all others whom it doth or may concern, for all exchange, re-exchange, damages, costs, charges, and interests suffered or to be suffered for want of payment of the said note.

Thus done and protested in the presence of Messrs. Marcel T. Ducros and Joseph W. Jones, both of this city, witnesses.

In testimony whereof I grant these presents under my signature, and the impress of my seal of office, at the city of New Orleans, on the day and year first above written.

[SEAL.] EDW'D BARNETT,
Notary Public.

Copy on back of protest.

$400.] YAZOO CO., MISS., *November* 19, 1866.

On the first of January, 1869, I promise to pay to the order of at the Citizens' Bank of Louisiana, in New Orleans, four hundred dollars, for value received, with interest at the rate of eight per cent. per annum after date until paid.

SARAH D. PARTEE.
W. B. PARTEE.

(Endorsed:)

STATE OF MISSISSIPPI,
Yazoo County:

I, M. A. Jenkins, clerk of the probate court of the county of Yazoo, do hereby certify that the within note for four hundred dollars is
67 secured by deed in trust to Crescent City Bank, recorded Nov'r 19, 1866, in my office.

M. A. JENKINS, *Clk.*
By M. W. SMITH, *D. C.*

(Endorsed:) Filed with bill, 1 Ap'l, '73. Geo. T. Swann, cl'k.

Exhibit A, & Exhibit A to deposition of Hyams, p. 313.

This indenture, made and entered into this 19th day of November, in the year eighteen hundred and sixty-six, between William B. Partee and Sarah D. Partee of the first part, and Robert Bowman of the second part, witnesseth:

That for and in consideration of the sum of ten dollars in hand paid by the party of the second part to the said parties of the first part, the receipt whereof is hereby acknowledged, they, the said parties of the first part, hath granted, bargained, and sold, and by these presents doth grant, bargain, and sell unto him, the said party of the second part, the following described lands, to wit: The north half of section ten, the north

half of section twenty-four, the southwest quarter of section twenty-four, the southeast quarter and the southeast quarter of northeast quarter of section twenty-seven, township twenty, range two west; the southwest quarter of section five, township twenty-three, range one east; section fifteen, township twenty-three, range two west; the south half of
68 section ten, the southwest quarter of section eleven, the southeast quarter of section twelve, the west half of section twenty-three, the west half of northwest quarter of section twenty-four, township 23, range two west; the north half of northeast quarter, the north half of northwest quarter, of section 18, west half of section 17; all of section 34; the west half of section 35, in township 24, range four (4) west; all of section 23; the north half of section 26, township 24, range four west; all of section 29, & northwest quarter of section 32, in township 24, range 3 west; and east half of section two in township 12, range four west, containing six thousand three hundred and sixty acres, more or less, and lying and being in the counties of Sunflower and Tallahatchie, in the State of Mississippi. And also the following described lands in the county of Yazoo, State of Mississippi, to wit: Lots three, four, five, six, seven, and eight, and 28¼ acres in lot No. one, section five; all of section (6) six, N. E. q'r section eight, S. ½ of sec. 9, N. E. ¼ S. ½ of N. W. ¼ of section 10, east half of N. W. ¼ of section eleven; all of section fourteen; W. ½ of N. E. ¼ N. W. ¼ & S. ½ of section eleven; N. ½ & E. ½ of S. E. ¼ of section 15, N. ½ & S. E. ¼ of section 23, W. ½ of section 24, T. 9, range 4 west; also, the N. ½ of sec. one & N. W. ¼ of section two;
69 northeast q'r of section 3, in township 9, range five west; lots 7 in section 31 & 7 in sec. 32, town. 10, range 4 west; lots six in sec. 34 & 7 in sec. 35; and also lots 4 & 5 in section 36, township 10, R. 5 west; also, N. E. ¼ & E. ½ of N. W. ¼ sec. 11, W. ½ of W. ½ sec. one, E. ½ of S. W. ¼ sec. 2, township 12, range 4 west; and also all the mules, horses, cattle, farming implements, and other personal property of Sarah D. Partee.

To have and to hold the aforesaid lands and personalty, together with all the rights, tenements, and hereditaments, unto him, the said party of the second part, his heirs, and assigns, and the said parties of the first part for themselves, their heirs, executors, and administrators will by these presents forever warrant and defend the same unto him, the said party of the second part, his heirs, and assigns forever.

Upon the trusts, however, as hereinafter mentioned in this deed, viz, that whereas the said Sarah D. Partee is indebted to W. J. McLean in the sum of five thousand dollars, due Feb'y 28, 1862, and to John Montgomery in the like sum of five thousand dollars, due Feb'y 25, 1862, and to J. M. Denman in the sum of five thousand dollars, due Feb'y 18, 1862, and also to said Denman in the further sum of four thousand dollars, due May 13th, 1862, and to W'm Silliman in the sum of two thou-
70 sand five hundred, due Feb'y 13, 1862, and to Benoist, Shaw & Co. in the sum of twenty-two hundred dollars, due Feb'y 11, 1862, and to said Benoist, Shaw & Co. also the further sum of twenty-three hundred dollars, due Feb'y 7th, 1862, and to William C. Bibb in the sum of five thousand dollars, due December 16, 1861, and to H. Hopkins in the sum of twenty-nine hundred dollars, due March 9th, 1862, and to the Bank of New Orleans in the sum of twenty three hundred dollars, due Jan'y 29, 1862, and to the Crescent City Bank in the sum of four thousand, due March 23d, 1862, and to the Bank of Louisiana in the sum of five thousand, due Dec'r 23, 1861, and to the Citizens' Bank in the sum of twenty-nine hundred dollars, due March 14, 1862, and to Conner & Son in the sum of three hundred dollars, due Jan'y 21st, 1862, all of

interest under this deed, but the property conveyed herein shall inure to the use and benefit only of such creditors as shall accept the terms of settlement herein mentioned, and shall release, acquit, and discharge said Sarah D. Partee from the aforesaid liabilities first mentioned.

And the said party of the second part, upon the failure of said Sarah D. Partee and William B. Partee to pay at maturity any of the aforesaid last-mentioned promissory notes given in lieu and payment of the aforesaid first described indebtedness of Sarah D. Partee, and which are due on the first days of January, 1868, 1869, 1870, 1871, and 1872, and at the request of the holder or holders of said promissory notes, shall sell the aforesaid described lands lying and being in the county of Yazoo,
77 State of Mississippi, & personalty, or so much or such part thereof as may be necessary to pay said promissory notes so being due, at public sale to the highest bidder, in front of the court-house door of Yazoo City, first giving thirty days' notice of the time and place of sale by advertisement in a public newspaper in the county, and the proceeds arising from said sale shall, after deducting the expenses of sale and five per cent. of the amount thereof to be paid to said party of the second part for his services, be applied to the payment of said promissory notes, principal and interest then due, and as the remainder of said notes shall become due and payable, the said party of the second part, at the request of the holders thereof, shall in like manner sell such amount or quantity of said lands or personalty as may be sufficient to pay the same, after deducting five per cent. for the services of said party of the second part, and the expenses, until all of said promissory notes, principal and interest, are paid, or until said lands and personalty are sold and exhausted.

The said parties of the first part, however, shall remain in peaceable and quiet possession of the said lands in Yazoo County, as well as of the said personal property until the same are sold under the terms
78 and provisions of this deed, and the rents and profits arising therefrom, however, after the payment of all plantation and other necessary expenses, are also conveyed to said party of the second part, to be applied, appropriated, and used for the payment of the aforesaid and last-described promissory notes.

It is further understood and expressly provided, that if any of the aforesaid creditors of said Sarah D. Partee shall fail within ninety days from the date of this deed to signify in writing their acceptance of the terms of settlement and payment of their claims or debts as herein provided, said creditor so failing to accept the aforesaid terms will and shall be considered as refusing the same, and the said creditor or creditors so failing to accept shall be barred of benefit, right, advantage, or privilege of the terms and provisions of this deed. If the said parties of the first part shall well and truly pay or cause to be paid all of the aforesaid last-described promissory notes maturing the first day of January, 1868, 1869, 1870, 1871, and 1872, as they shall respectively fall due, then this deed of conveyance of the aforesaid lands in Yazoo County, State of Mississippi, shall be void and of no effect, otherwise in full force and effect.

In testimony whereof the parties of the first part have hereunto set their hands and seals the day and year above written.

W. B. PARTEE. [SEAL
SARAH D. PARTEE. [SEAL.]

79 The words on page 2 of the foregoing deed, viz: "And also all the mules, horses, cattle, farming implements, and other personal

property of Sarah D. Partee," interlined and inserted before signing and acknowledging this deed"; also word "personalty" on same page, & "seven" on p. 4, & "personalty" on p. 5, and "the principal of" on same page, and "refuse to" on p. 8, and "personalty" on same page and on p. 9, also inserted before signing and acknowledging.

W. B. PARTEE. [SEAL.]
SARAH D. PARTEE. [SEAL.]

[U. S. inter. rev. stamps to the amount of $70.00 duly attached & cancelled.]

STATE OF MISSISSIPPI,
Yazoo County:

Before me, M. A. Jenkins, clerk of the probate court in and for the county and State aforesaid, personally appeared William B. Partee, whose name is signed to the foregoing deed, who acknowledged that he signed, sealed, and delivered the same as his own voluntary act and deed for the purposes therein named on the day and year therein written.

And also personally appeared before me Sarah D. Partee, whose name is signed to the foregoing deed, the wife of said William B. Partee, who being by me first examined privately, separately, and apart from her husband, the said William B. Partee, acknowledged that she
80 signed, sealed, and delivered said deed as her own voluntary act and deed, on the day and year therein written and for the purposes therein named, freely, without any fear, threat, or compulsion on the part of her said husband.

In testimony whereof I have hereunto set my hand and seal this 19th day of November, 1866.

[SEAL.] M. A. JENKINS, *Clerk*,
By M. W. SMITH, *D. C.*

[U. S. inter. rev. stamps to the am't of $24.00 affixed and duly cancelled.]

THE STATE OF MISSISSIPPI,
Yazoo County, set:

I, M. A. Jenkins, clerk of the probate court of said county, certify that the instrument of writing to which this certificate is attached, from W'm B. Partee & wife to Robert Bowman, trustee, was filed in my said office for record on the 19th day of Nov., 1866, and that the same has this day been duly made of record therein, in Book X of the record of deeds, etc., of said county, on pages 129, 130, 131, 132, 133, 134, 135, & 136.

Given under my hand and the seal of said court, at Yazoo City, this 19th day of Nov., eighteen hundred and sixty-six.

[SEAL.] M. A. JENKINS, *Clerk*,
By M. W. SMITH, *D. C.*

[$18.00 U. S. inter. rev. stamps affixed & duly cancelled.]

(Endorsed:) Filed with o. bill 1 Ap'l, '73. Geo. T. Swann, cl'k.

81 *Exhibit B, & Exhibit 2 to Hyams' dep.* (*See page 3, 6, Record.*)

YAZOO CITY, MISS., *Nov. 21st*, 1866.

Mess. HYAMS & JONAS,
New Orleans, La.:

GENTLEMEN: At the request of M'r W. B. Partee, we have examined

the records of this county, with the view of ascertaining what liens or incumbrances are on the property of his wife, M'r's Sarah D. Partee.

Under the will of M'r James Dick, from whom the property is derived, there is an annuity of one thousand dollars to be paid to M'r Ja's Todd during his lifetime; and there is also a judgment for about five thousand dollars which the plaintiff will settle on favorable terms.

M'r & M'r's Partee have executed a deed for all of her property of every kind to Robert Bowman, esqr., for the benefit and use of her creditors. As to the fitness and capacity of the trustee, we refer you to M'r Ja's M. Allen, of the commission house of T. H. & J. M. Allen & Co., and Mess. Hogan & Patton, of N. O.

Under the terms of the deed, six thousand three hundred and twenty acres of land in Sunflower and Tallahatchie Counties are conveyed to the trustee, for the benefit of her creditors, they receiving said lands in payment of one-half of their claims, @ 10 per acre. The trustee, at the request of those holding the largest number of claims, shall sell the lands at public auction, upon 30 days' notice, or, at the request of
82 any creditor or creditors, the said trustee shall convey to him or them, by deed in fee simple, an undivided interest in said lands, at $10 per acre, to an amount equal to one-half of his or their claim or claims.

The remainder or other half of the claims of her creditors shall be evidenced by promissory notes, with 8 % int., to each creditor, payable in five equal annual instalments, on 1st January, 1868, '69, '70, '71, '72, secured by deed in trust to said trustee on all of her property, including lands, mules, stock, farming implements, in Yazoo County, and also the rents & profits of said lands, after deducting the necessary plantation expenses. Upon failure to pay such notes at maturity, the trustee, at request of any creditor or holder of said renewed notes, shall sell, upon 30 days' notice, sufficient property to pay said notes. All the profits of the place, after deducting expenses, shall go to 8 % int. of said notes. Each creditor, within 90 days, is to signify his acceptance in writing of said deed, or be forever barred from all interests or benefit thereof. We deem the property in this county amply and entirely sufficient to secure beyond a doubt the payment of said renewed notes.

Under the laws of this State, the property of a married woman is only liable for family supplies or necessaries, wearing apparel of herself and children, or for household furniture, building and improve-
83 ments upon her estate; and "no judgment shall be rendered against her unless the liability of her separate estate be first established." And her separate, under the decisions of our supreme court, is not liable, except for such contracts as above stated. Yet she can mortgage her property for the part of her own debt or that of her husband, and thus make it liable. If the creditors of M'r's Partee accept the terms proposed by her, the new claims or notes will be secured beyond doubt, we think; if they do not, and attempt to coerce payment of the full am'nt of the original claims, under the uniform decisions of our court, she could defeat them. She informs us, however, that she does not desire to do this, and will not do it except as a dernier resort. If her property was sold now under execution, it would not pay the claims secured by trust deed, with int. on them.

We are, very respectfully, &c.,

WILKINSON & BOWMAN.

(Endorsed:) Filed with bill 1 Ap'l, '73. Geo. T. Swann, clerk.

Exhibit C. Exhibit No. 3 to Hyams' deposition.

The war caused me a loss of over $300,000, leaving me a debt of $125,000, and nothing but lands to pay with, which at present would not sell for one-half its nominal value, nor one-half of the indebtedness.

84 In order to place all my creditors on the same basis (four of them having brought suit for about $14,000), propose to pay the face of my indebtedness as follows: one-half in lands in Tallahatchie and Sunflower Counties, Miss., not in cultivation, at $10 per acre; the balance or remaining half in five payments:

1/5, 1 Jan'y, 1867.
1/5, 1 " 1868.
1/5, 1 " 1869.
1/5, 1 " 1870.
1/5, 1 " 1871.

Or, in other words, take up the debt in five years, with 8 % per annum interest, securing the payment by mortgage on the balance of the land I own and now have in part cultivation in Yazoo County, Miss. It was not my wish to make any proposition to my creditors before realizing something to pay them in hand; the action of some of them compels me to act now in the matter in order that all may share alike in the distribution of my assets.

In order to secure confidence in the necessary writings, titles, &c., incident to a final close of my proposition, I have selected Judge Robert Bowman & Judge Wilkinson, of Yazoo City, Miss., to see to the proper execution of the deed of trust on the lands in cultivation, and act as trustee, or select proper persons to become so, and also to see to the proper conveyances of the trusts of land to a responsible trustee

85 for the benefit of the creditors for the remaining 50 %.

Mess'rs Hyams & Jonas will attend to any of the business which the creditors may choose to place in their hands, and to the distribution of the new notes after they are executed.

New Orleans, 19th July, 1866.

SARAH D. PARTEE,
By W. B. PARTEE.

(Endorsed:) Filed with bill 1 Ap'l, '73. Geo. T. Swann, cl'k.

EXHIBIT D.

W'm B. Partee & wife to Robert Bowman. Filed Nov. 19, 1866. Recorded same day, b'k 33, record of deeds, pages 129 to 136.

M. A. JENKINS,
Clerk Yazoo County, Mississippi.

Creditors mentioned in the above deed of trust.

W. J. McLean, $5,000.00—$2,500.00. Returned to W. B. Partee.
John Montgomery, $5,000.00—$2,500.00. do. do.
J. M. Denman & Co. [$5,000.00] [$4,000.00]—[$4,500.00]. Settled. Old notes returned to W'm Partee.
Benoist, Shaw & Co., $2,200.00 } $2,250.00. Returned to W'm Partee.
Do. $2,300.00 }
W'm Silliman, $2,500.00—$1,250.00. do. do.
W. C. Bibb, $5,000.00—$2,500.00. do. do.
H. Hopkins, $2,700.00—$1,350.00. do. do.
Bank of New Orleans, $2,300.00—$1,150.00. do. do.
Bank of Louisiana, $5,000.00—$2,500.00. do. do.

Crescent City Bank, [$4,000.00]—[$2,000.00]. Settled. Old notes delivered up.

Citizens' Bank, Son & Co., M'r's Partee, [2,700.00]—[1,350.00]. Returned to W. Partee, for M'r's Partee.

86 Conner & Son, [3,000.00]
Conner & Son, [3,000.00] } 4,500.00. Settled. Old notes delivered to W'm Partee.
Do [3,000.00]

J. W. Hunt, 1,337.00. No notes ever received.

L'a State Bank, [4,236.00]—[2,115.00]. Settled. Old notes delivered to W. Partee.

C. C. Peck, $2,250.00—$1,275.00. Returned to W. Partee.

D. Dapessier & Co., [2,850.54], [4,359.42]—[3,600.00]. Settled, and old notes returned to W. Partee.

J. A. Miller, 3,547.97
do 5,110.00 } $4,328.95. Notes left for W. Miller not claimed by him.

Canal Bank, [10,000.00]—[5,000.00]. Settled, and old notes delivered up to W. Partee.

C. E. Alter, 4,500.00—2,250.00. Returned to W. Partee.

Union Bank, [4,415.00]—[2,207.50]. Settled, and old notes delivered to W. Partee.

Charlotte Levy, 1,487.56. No notes ever received.

No. 9, McStea, Value & Co., [1,200.00]—[600.00]. Settled, and notes delivered to W. Partee.

No. 4, Slark, Stauffer & Co., [1,000.00]—[500.00]. do do

H. Walworth, 3,889.96—1,945.00. Returned to W. Partee.

Rockford, Brown & Co., 5,000.00
5,000.00 } No notes ever received.

J. Hemthal & Co, 1,000,00. do do

Richard H Barkley, 700.00. do do

NEW ORLEANS, 21 *Jan'y* 1868.

I have this day received back from Mess. Hyams & Jonas all the 12 sets of notes (5 in a set) mentioned in the 2d column above, as returned to me. They were placed with them on deposit to be
87 returned to me if not called for. The other sets he has delivered to the parties entitled to same, and are all bracketed [ ] thus. I have received the original notes so bracketed in the first column, all except those due J. W. Miller, & which will be sent to me when rec'd by Hyams & Jonas.

(Signed) W. B. PARTEE.

The foregoing is a copy of the original in the hands of Geo. Hyams.

(Endorsed:) Filed, 1 Ap'l, '73. Geo. T. Swann, clerk.

EXHIBIT E.

STATE OF MISSISSIPPI,
Yazoo County:

Be it remembered that heretofore, to wit, at the May term, 1866, of the Yazoo circuit court, the following proceedings were had and done before J. A. P. Campbell, judge of said court.

Declaration.

Circuit court of Yazoo County, May term, 1866.

STATE OF MISSISSIPPI,
Yazoo County:

James Stewart, the plaintiff in this suit, complains of Sarah D. Partee and William B. Partee, the defendants, in this, that they are indebted to him in the sum of five thousand three hundred and ninety-seven $\frac{87}{100}$ dollars, in that, whereas heretofore, to wit, on the 18th of December, 1861, at, to wit, the city of New Orleans, in the
88 county of Yazoo, the said defendants by their names and signatures of Sarah D. Partee & W. B. Partee, did make and deliver to Rotchford, Brown & Co. (who are non-residents of the State of Mississippi, and not sued in this action) their, said defendants', certain promissory note, bearing date the day and year aforesaid, whereby they, said defendants, then and there undertook and promised, twelve months after the date thereof, to pay to the order of Rotchford, Brown & Co., at their counting-house, in the city of New Orleans, the sum of fifty-three hundred and ninety-seven $\frac{87}{100}$ dollars, value received, with eight per cent. per annum interest from date until paid, and the said Rotchford, Brown & Co., to whom or whose order payment of said amount of said promissory note was made, afterwards and before payment of said prommissory note, to wit, the day and year aforesaid, did endorse said promissory in writing and deliver the same to said plaintiff, by means whereof said defendants became liable to pay the amount of said promissory note to said plaintiff, and being so liable, in consideration then and there undertook and promised to pay the same to said plaintiff, when they should be thereunto afterwards requested; copy of which promissory note is herewith filed, marked "Exhibit A." Plaintiff
89 avers, that although often requested, said defendants have wholly faild to pay the amount of said promissory note or any part thereof, to the damage of said plaintiff, ten thousand dollars, and he therefore sues.

WILKINSON & BOWMAN.

Copy Exhibit A.

$5,397.87.] NEW ORLEANS, *December* 18, 1861.

Twelve months after date I promise to pay to the order of Rotchford, Brown & Co., at their counting-house in this city, fifty-three hundred and ninety-seven $\frac{87}{100}$ dollars, value received, with eight per cent. per annum interest after maturity until paid.

Authorized by me.

(Sig.) SARAH D. PARTEE.
W. B. PARTEE.

(Across the face:) Rotchford, Brown & Co.

Judgment in circuit court of Yazoo County. May term, 1866.

JAMES STEWART
vs.
W. B. & SARAH D. PARTEE.

We hereby release all errors in the above stated case.

Witness our hands and seals this 12th day of April, 1867.

W. B. PARTEE. [SEAL.]
SARAH D. PARTEE. [SEAL.]

Attest:
C. T. CALHOUN.
Filed April 15, 1867.

G. A. GIBBS, *Cl'k*,
By E. DRENNING, *D. C.*

(Endorsement on declaration:) James Stewart vs. W. B. Partee et al. Filed April 28, 1866. Gibbs, cl'k. Yazoo circuit court, May term, 1866. $6,894.86. Jud., June 6, '66. Wilkinson & Bowman, P. Q.

90 *Summons.*

The State of Mississppi to the sheriff of Yazoo Co., greeting:

You are hereby commanded to summon Sarah D. Partee, and William B. Partee, if to be found in your county, so that they appear before the circuit court to be held at the court-house in Yazoo City, in and for the county aforesaid, on the fourth Monday of May next, to answer a complaint filed in our said court by James Stewart, and have then and there this writ.

Issued this 28th day of April, 1866.

[SEAL.] GEO. A. GIBBS, *Clerk.*
[Stamp.]

Endorsement.

This action is founded on defendants' promissory note, payable to Rotchford, Brown & Co., for $5,397$\frac{87}{100}$, dated December 18, 1861, payable twelve months after date, with interest at 8 per cent. per annum from maturity until paid. Said promissory note was indorsed by Rotchford, Brown & Co. to said plaintiff.

The sum actually demanded is the amount of said note with interest thereon until paid. Judgment will be required at the return of this writ. Complaint filed when writ issued.

WILKINSON & BOWMAN,
Attorneys.

GEO. A. GIBBS, *Clerk.*

Executed May 10, '66, by delivering a copy of the within to the within-named parties.

S. M. DYER, *Sh'ff*,
By CHA'S C. DYER, *Deputy.*

91 May term, 1866, of Yazoo circuit court, 10th day of term, the same being the 6th day of June, 1866, the following judgment was rendered, to wit:

JAMES STEWART
vs. } A. 137.
SARAH D. PARTEE.

This day came the plaintiff, by attorney, and the defendants, being called to answer plaintiff's complaint, came not, but made default. Whereupon it is considered by the court that plaintiff recover of defendants the sum of $6,894.86 (six thousand eight hundred and ninety-four

dollars and eighty-six cents), amount in plaintiff's complaint mentioned, and also his costs in this behalf expended, and plaintiff grants stay of execution six months.

J. A. P. CAMPBELL,
Judge.

To GEORGE A. GIBBS,
Clerk of the Circuit Court of Yazoo County, State of Mississippi.

The petition of William B. Partee and Sarah D. Partee respectfully represents that on the sixth day of June, A. D. 1866, James Stewart obtained a judgment, in the circuit of Yazoo County, against your petitioners for the sum of six thousand eight hundred and ninety-four $\frac{86}{100}$ dollars, together with the costs of suit; that said judgment
92 was obtained on a contract made prior to the 1st day of June, A. D. 1865; that your petitioners, feeling themselves aggrieved by the judgment and recovery aforesaid, desire to have the same reviewed by the high court of errors and appeals of the State of Mississippi, and for that purpose pray for a writ of error with a supersedeas, returnable to the next June term of said high court of errors and appeals of the State of Mississippi, to be held at Macon, and herewith tender their bond, with sufficient sureties, as required by law.

February 18, 1868.

SARAH D. PARTEE.
W. B. PARTEE.

Bond.

Know all men by these presents that we, William B. Partee and Sarah D. Partee, principals, and James D. Partee and William Partee, sureties, are held and firmly bound unto James Stewart in the sum of two hundred dollars, the payment of which well and truly to be made we bind ourselves, our heirs, executors, administrators, and assigns firmly by these presents. Sealed with our seals and dated this 18th day of February, A. D. 1868.

The consideration of the above obligation is this: That whereas, in the circuit court of Yazoo County, State of Mississippi, on the sixth day of June, A. D. 1866, the above-named James Stewart recovered
93 a judgment against the above-bounden William B. Partee and Sarah D. Partee for the sum of six thousand eight hundred and ninety-four $\frac{86}{100}$ dollars, together with costs of suit; and the said William B. and Sarah D. Partee, feeling aggreived by the judgment aforesaid, and desiring to have the same reviewed by the high court of errors and appeals, have applied to the clerk of the circuit court of Yazoo County for a writ of error with supersedeas, removing said cause to the high court of errors and appeals, to be held at Macon on the first Monday of June next, which has been granted them on the execution of this bond.

Now, if the said William B. and Sarah D. Partee shall prosecute with effect the said writ of error, or in case they fail therein shall well and truly pay all costs that may be awarded against them, then this obligation to become void; otherwise, to remain in full force and virtue.

SARAH D. PARTEE. [SEAL.]
W. B. PARTEE. [SEAL.]
J. D. PARTEE. [SEAL.]
W. PARTEE. [SEAL.]

STATE OF MISSISSIPPI,
Yazoo County:

Before me, Geo. F. Mellen, a justice of peace in & for the county & State aforesaid, personally appeared James D. Partee & Wil-
94 liam Partee, sureties in the foregoing bond, who on oath say they are worth the penalty thereof in property not exempt from execution over and above their debts and liabilities.

J. D. PARTEE.
W. PARTEE.

Sworn and subscribed to before me this the 18th day of February, 1868.

[SEAL.] GEO. F. MELLEN, *J. P.*

STATE OF MISSISSIPPI,
Yazoo County:

I, W. H. Foote, clerk of the circuit court in and for said county, do hereby certify that the foregoing pages contain a true and correct copy or transcript of the papers in the above-stated case, together with the judgment of the court and the execution and vendi., as the same appear of record and on file in my office.

Given under my hand and official seal this 7th day of March, 1873.

[SEAL.] W. H. FOOTE, *Clerk*,
Per R. D. SMITH, *D. C.*

(Endorsed:) Filed 1 April, 1873, with bill. Geo. T. Swann, clerk.

EXHIBIT F.

The State of Mississippi to the sheriff of Yazoo County, greeting:

95 We command you that of the goods and chattels, lands and tenements of Sarah D. Partee and William B. Partee, lately of our county, you cause to be made the sum of six thousand eight hundred and ninety-four dollars and $\frac{86}{100}$, which James Stewart lately, in our circuit court, has recovered against them for damages which he has sustained by reasons of the non performance of a certain promise and assumption by the said Sarah D. Partee and W'm B. Partee to the said James Stewart, lately made, with interest at the rate of 8 per centum per annum from the 6th day of June, A. D. 1866, until paid. Also the sum of $12.00 for costs and charges by him about his suit in that behalf expended, whereof the said Sarah D. Partee and W'm B. Partee convicted, appears to us by record; and that you have the said sums of money before the judge of the fifth judicial district of the State aforesaid at a circuit court to be holden at the court of Yazoo County on the fourth Monday of May next, to render to the said James Stewart for his damages and costs aforesaid. And have then and there this writ.

Issued the 1st day of January, 1867.

[SEAL.] G. A. GIBBS, *Clerk.*
By E. DREMMIG, *D. C.*

(Endorsed:) Rec'd Jan'y 15, 1867. S. M. Dyer, sheriff. By Jno. T. Heth, D. S.

96 (Endorsed:)

Levied April 9, 1867, on the following lands, less homestead, to wit: Lots 3, 4, 5, 6, 7, & 8, & 28 acres, in lot 1, sec. 5; all sec. 6; N. E. $\frac{1}{4}$

sec. 8; S. ½ sec. 9; N. E. ¼ & S. ½ of N. W. ¼ & S. ½ & N. W. ¼ of N. W. ¼, sec. 10; W. ½ of N. E. ¼ & N. W. ¼ & S. ½, sec. 11; all sec. 14; N. ½ & E. ½ of S. E. ¼, sec. 15; all sec. 16; N. ½ & S. E. ¼, sec. 23; W. ½ sec. 24, T. 9, R. 4 W.; N. ½ sec. 1; N. W. ¼ sec. 2; N. E. ¼ sec. 3, T. 9, R. 5 W.; lot 7, sec. 31; lot 7, sec. 32, T. 10, R. 4 W.; lot 6, sec. 34; lot 7, sec. 35; lot 5, sec. 36, T. 10, R. 5 W., as property of defendants.

S. M. DYER, *Sh'ff.*
By JNO. T. HETH, *D. S.*

Satisfied as to costs June 19, 1867.

S. M. DYER, *Sh'ff.*
By CHAS. C. DYER, *D. S.*

Vendi. exponas.

The State of Mississippi to the sheriff of Yazoo County, greeting:

You are hereby commanded that you expose to sale, subject to homestead exemption, the following lands, to wit: Lots 3, 4, 5, 6, 7, & 8, & 28 acres in lot 1, section 5; all section 6; N. E. ¼ section 8; S. ½ section 9; N. E. ¼ & S. ½ of N. W. ¼ & S. ½ section 10; W. ½ of N. E. ¼ & N. W. ¼ & S. ½ section 11; all section 14; N. ½ & E. ½ of S. E. ½ section 15; all section 16; N. ½ & S. E. ¼ section 23; W. ½ of section 24, township 9, range 4 west; N. ½ section 1; N. W. ¼ section 2; N. E. ¼ section 3, township 9, range 5 west; lot 7, section 31; lot 7, section 32, township 10, range 4 west; lot 6, section 34; lot 7, section 35; lot 5, section
97 36, township 10, range 5 west; the property of W'm B. Partee and Sarah D. Partee, which according to command you have taken, and which remains in your hands unsold, as you have certified to our circuit court of Yazoo County, to the value of $6,894.86, with interest on $6,894.86, part thereof from the 6th day of June, 1866, at 8 per centum per annum until paid, to satisfy James Stewart, the sum aforesaid, whereof in our said circuit court he has recovered execution against William B. Partee and Sarah D. Partee, his wife, by virtue of a judgment in our circuit court of Yazoo County aforesaid. Also the sum of $12.00, clerk's and sheriff's fees, farther in this behalf expended.

And have you the said sums of money before the judge of our said court the 4th Monday of May next, to render to the said James Stewart in satisfaction of the judgment and execution aforesaid, and have then and there this writ.

Witness my hand and seal of said court this 7th day of December, A. D. 1868.

[SEAL.]

G. A. GIBBS, *Clerk,*
By E. DREMMIG, *D. C.*

Clerk Gibbs, 4.00; Sh'ff Dyer, 3.00; printer, 5.00—$12.00.

(Endorsed:) Rec'd Dec. 8, 1868. S. M. Dyer, sh'ff. Jno. T. Heth, D. S.

The within described property was sold Jan'y 5, 1869, for five
98 thousand seven hundred dollars; applied to costs $93.50; to plaintiffs money $5,656.50; & defendants have no further goods or chattels, lands or tenements in my county where any further sum can be made.

S. M. DYER, *Sh'ff,*
By JNO. T. HETH, *D. S.*

(Endorsed:) Filed with bill. 1 April, '73. Geo. T. Swann, cl'k.

EXHIBIT G.

W. B. Partee, p'r sh'ff, to James Stewart.

Know all men by these presents, that whereas, in the circuit court of Yazoo County, State of Mississippi, on the 6th day of June, 1866, James Stewart recovered judgment against William B. Partee and Sarah D. Partee, his wife, for the sum of six thousand eight hundred & ninety-four $\frac{65}{100}$ dollars and costs of suit, on which judgment a writ of fieri facias was issued from the circuit court, returnable to the May term, 1867, of said court, which writ was directed to the sheriff of said county, commanding said sheriff that of the goods and chattels, lands and tenements of said William B. Partee and Sarah D. Partee he cause to be made
99 the aforesaid sum of money with interest and costs, which writ was duly received by said sheriff, and by said sheriff levied April 9th, 1867, on the following property, to wit:

Lots 3, 4, 5, 6, 7, & 8, and 28 acres in lot 1, section 5; all sec. 6; N. E. $\frac{1}{4}$ sec. 8; S $\frac{1}{2}$ sec. 9; N. E. $\frac{1}{4}$ & S. $\frac{1}{2}$ of N. W. $\frac{1}{4}$ & S. $\frac{1}{2}$ sec. 10; W. $\frac{1}{2}$ of N. E. $\frac{1}{4}$ & N. W. $\frac{1}{4}$ & S. $\frac{1}{2}$ sec. 11; all sec. 14; N. $\frac{1}{2}$ & E. $\frac{1}{2}$ of S. E. $\frac{1}{4}$ sec. 15; all sec. 16; N. $\frac{1}{2}$ & S. E. $\frac{1}{4}$ sec. 23; W. $\frac{1}{2}$ sec. 24, town. 9, range 4 west; N. $\frac{1}{2}$ sec. 1; N. W. $\frac{1}{4}$ sec. 2; N. E. $\frac{1}{4}$ sec. 3, township 9, range 5 west; lot 7, sec. 31; lot 7, sec. 32, township 10, range 4 west; lot 6 sec. 34; lot 7, sec. 35; lot 5, sec. 36, township 10, range 5 west, as the property of said W'm B. Partee & Sarah D. Partee, all of said lands lying and being in Yazoo County, State of Mississippi; and said writ was duly returned to the said circuit court with said levy endorsed thereon. Afterwards, to wit, on the 7th day of December, 1868, there issued from said circuit court a writ of venditioni exponas, directed to the sheriff of said county, commanding said sheriff to expose to sale the aforesaid lands to the value of the aforesaid sum of money with interest and cost; and whereas, I, Samuel M. Dyer, sheriff of said county, by virtue of said writ, did on the 5th day of January, 1869, after giving due and timely notice of
100 the time, place, and terms of sale according to law, expose said lands to sale at public auction, before the court-house door in Yazoo City, when and where James Stewart became the purchaser of the following parcels of land, to wit, lots No. 3, 4, 5, 6, 7, & 8, & 28 acres in lot 1, section 5; all section 6; the N. E. $\frac{1}{4}$ sec. 8, in township 9, range 4 west; N. $\frac{1}{2}$ section 1; N. W. $\frac{1}{4}$ section 2; the N. E. $\frac{1}{4}$ section 3, township 9, range 5 west; lot 7, sec. 31; lot 7, section 32, township 10, range 4 west; lot 6, section 34; lot 7, section 35; lot 5, section 36, township 10, range 5 west, for the sum of five thousand two hundred dollars, that being the highest and best bid for said land.

Now, therefore, for and in consideration of the premises aforesaid and of the aforesaid sum of five thousand two hundred dollars to me in hand paid by the said James Stewart, the receipt whereof is hereby acknowledged, I do by these presents grant, bargain, sell, and convey to the said James Stewart the aforesaid lands.

To have and to hold the same to him and to his heirs and assigns forever, together with all the appurtenances thereunto belonging, as fully and completely as I am empowered to grant, bargain, sell, and convey by virtue of the proceedings aforesaid, and by law as sheriff as aforesaid.

101 Given under my hand and seal, this the 5th day of January, A. D. 1869.

S. M. DYER, [SEAL.]
Sheriff.

STATE OF MISSISSIPPI,
Yazoo County:

Personally appeared before me, M. A. Jenkins, clerk of the probate court of the county of Yazoo, S. M. Dyer, sheriff, whose is signed to the foregoing deed, who acknowledged that he signed, sealed, and delivered the same on the day & year & for the purposes therein mentioned as his act and deed.

Given under my hand and official seal, Febr'y 18, A. D. 1869.

[SEAL.] M. A. JENKINS,
Clerk.

Filed & recorded, Febr'y 19, 1869. $5.50 stamps on deed.
M. A. JENKINS, *Clk*,
By M. W. SMITH, *D. C.*

THE STATE OF MISSISSIPPI,
Yazoo County:

I, J. M. Sublett, clerk of the chancery court of said county, do hereby certify that the foregoing 3 pages & upper portion of this page contain a true & correct copy & transcript of the deed therein named, together with the certificates thereof as fully & completely as the same
102 appears & remains of record in my office in book Y on pages 483, 484, & 485 of the records of deeds of Yazoo County.

Given under my hand and seal of office this 10th day of February, A. D. 1873.

[SEAL.] J. M. SUBLETT, *Clk*,
By N. T. PUGH, *D. C.*

(Endorsed:) Filed with bill 1 Ap'l, '73. Geo. T. Swann, cl'k.

EXHIBIT H.

W'm B. Partee et ux., per sh'ff, to James D. Partee.

Know all men by there presents that, whereas, on the 6th day of June, 1866, in the circuit court of Yazoo County, State of Mississippi, James Stewart recovered judgment for six thousand eight hundred and ninety-four $\frac{86}{100}$ dollars ($6,894\frac{86}{100}$) against William B. Partee and Sarah D. Partee, his wife, on which judgment execution was issued from said court on the 1st day of January, 1867, which execution was directed to the sheriff of said county, commanding said sheriff that of the goods and chattels, lands and tenements of the said William B. Partee and Sarah D. Partee he cause to be made the aforesaid sum of money together with interest and costs. And, whereas, on the 9th day of April, 1867, the said sheriff by virtue of said execution, levied on the
103 following lands as property of said defendants, to wit: Lots No. 3, 4, 5, 6, 7, & 8, and 28 acres in lot 1 sec. 5; all in sec. 6; N. E. ¼ sec. 8; S. ½ sec. 9; N. E. ¼ and S. ½ of N. W. ¼, & S. ½ sec. 10; the W. ½ of N. E. ¼ and N. W. ¼ and S. ½ sec. 11; all sec. 14; N. ½ and E. ½ of S. E. ¼ sec. 15; all sec. 16; N. ½ and S. E. ¼ sec. 23; W. ½ sec. 24, township 9, range 4 west; N. ½ sec. 1; N. W. ¼ sec. 2; N. E. ¼ sec. 3, township 9, range 5 west; lot 7, sec. 31; lot 7, sec. 32, township 10, range 4 west; lot 6, sec. 34; lot 7, sec. 35; lot 5, sec. 36, township 10, range 5 west, and lying and being in Yazoo County, State of Mississippi, as property of said defendants; and whereas, on the 7th day of December, 1868, a writ of venditioni exponas was issued from the clerk's office of said court, directed to the sheriff of said county, commanding him to expose to

sale the aforesaid lands to satisfy the aforesaid sum of money and all interest and costs; which said writ was duly received by said sheriff; and whereas, I, Samuel M. Dyer, sheriff of said county, by virtue of said writ, did on the first Monday of January, 1869, that being the 4th day of said month, after giving due and legal notice of the time, place, and terms of sale, exposed the aforesaid lands to sale at public auction, before the court-house door in Yazoo City, to the highest bidder for cash,

when and where James D. Partee became the purchaser of the
104 following parcels of said lands, to wit: The south half of section nine, the N. E. ¼ and S. ½ of N. W. ¼ and S. ½ sec. 10; the W. ½ of N. E. ¼ and N. W. ¼ and S. ½ sec. 11; all sec. 14; N. ½ sec. 15; E. ½ of S. E. ¼ sec. 15; N. ½ and S. E. ¼ sec. 23; the W. ½ sec. 24, all in township 9, range 4 west, for the sum of five hundred and fifty dollars (subject to an incumbrance), that being the highest and best bid made for said lands: Now, therefore, for and in consideration of the premises aforesaid, and of the sum of five hundred and fifty dollars to me in hand paid by the said James D. Partee, the receipt of which is hereby acknowledged, I do by these presents grant, bargain, sell, and convey the aforesaid lands to the said James D. Partee, to have and to hold the same to him and his heirs and assigns forever, together with all the appurtenances thereunto belonging, as fully and completely as I am authorized and empowered to grant, bargain, sell, and convey by the proceedings aforesaid and by law as sheriff as aforesaid.

Given under my hand and seal and dated this 4th day of January, A. D. 1869.

S. M. DYER, [SEAL.]
Sheriff.

STATE OF MISSISSIPPI,
Yazoo County:

Personally appeared before me, M. A. Jenkins, clerk of the probate court of said county, Sam'l M. Dyer, and acknowledged that he
105 signed, sealed, and delivered the foregoing deed for the uses & purposes & on the day and year therein written as his act and deed.

Given under my hand and seal of said court January 14th, A. D. 1869.

[SEAL.] M. A. JENKINS, *Clerk.*
By M. W. SMITH, *D. C.*

Filed & recorded Jan'y 14, 1869. 82 stamps on deed.
M. A. JENKINS, *Clerk.*
By M. W. SMITH, *D. C.*

THE STATE OF MISSISSIPPI,
Yazoo County:

I, J. M. Sublett, clerk of the chancery court of said county, hereby certify that the foregoing three pages and upper portion of this page contain a true and correct copy & transcript of the deed from W'm B. Partee et ux., per sheriff, to Ja's D. Partee, together with the certificates & proof thereof, as fully & completely as the same appears & remains of record in my office in book Y, on pages 388 & 389, of the records of deeds of said county.

Given under my hand & seal of office this 8th day of Feb'y, 1873.

[SEAL.] J. M. SUBLETT, *Clk,*
By N. T. PUGH, *D. C.*

(Endorsed:) Filed 1 Ap'l with bill. Geo. T. Swann, cl'k.

106 EXHIBIT I.

James D. Partee et'x. to F. Barksdale, trustee, Nelson, Lamphier & Co.

Satisfied February 26, 1870.

NELSON, LAMPHIER & CO.

This indenture, made and entered into this thirteenth day of January, A. D. eighteen hundred and sixty-nine, by and between James Dick Partee and Jeanie Partee his wife, of the county of Yazoo and State of Mississippi, of the first part, Fountain Barksdale, of the county of Yazoo and State of Mississippi, of the second part, and Stephen O. Nelson, Thomas A. Nelson, and James S. Lamphier, merchants and partners doing business in the city of New Orleans, in the State of Louisiana, under the firm name and style of Nelson, Lamphier & Co., of the third part, witnesseth:

That the said James Dick Partee is justly and truly indebted to the said Stephen O. Nelson, Thomas A. Nelson, and James S. Lamphier, merchants and partners doing business in the name and under the firm of Nelson, Lamphier & Co., as aforesaid, in the sum of twenty-seven thousand dollars, being the amount of his (James Dick Partee's) thirteen notes, bearing date the eleventh of January, A. D. eighteen hundred and sixty nine, drawn payable to his own order and by him indorsed, payable at the Canal and Banking Company, in the city of New Orleans, bearing interest at the rate of ten per cent. per annum after maturity until paid, as follows, to wit: One of one thousand
107 dollars, one of two thousand dollars, and one of two thousand five hundred dollars, payable the tenth day of November, eighteen hundred and sixty nine; one for one thousand dollars, one of fifteen hundred dollars, one of two thousand dollars, and one of two thousand five hundred dollars, payable on the fifteenth day of December, eighteen hundred and sixty-nine; one for four thousand dollars, one of *one of* three thousand dollars, and one of two thousand, payable on the thirteenth of January, eighteen hundred and seventy; one of two thousand five hundred dollars, one of eighteen hundred dollars, and one of twelve hundred dollars, payable on the fifth day of January, eighteen hundred and seventy; in all, twenty-seven thousand dollars, and also for the sum of five thousand dollars for any supplies which the said Nelson, Lamphier & Co. may furnish the said James Dick Partee to enable him to cultivate his lands.

And whereas the said James Dick Partee is desirous to secure the punctual payment of the same, this indenture witnesseth, that the said James Dick Partee and Jeanie Partee his wife, in consideration of the premises, and in consideration of the further sum of ten dollars to him paid by the said Fountain Barksdale, the receipt of which is hereby acknowledged, have granted, bargained and sold, and by these
108 presents doth grant, bargain and sell unto the said Fountain Barksdale the following real estate and personal property situated in the county of Yazoo and State of Mississippi, together with all the improvements and rights thereunto belonging, to wit: The plantation situated in the county of Yazoo and State of Mississippi, known as "No Mistake" plantation, and also embracing "Tyrone" and "Seven Gums" plantation, described as follows: The south half of section nine, northeast quarter and south half of northwest quarter and south half of section ten, west half of northeast quarter and northwest quarter and south half of section eleven, all section fourteen, north half

and east half of southeast quarter of section fifteen, north half and southeast quarter of section twenty-three, west half of section twenty-four, township nine, range four west, together with the improvements now existing on said lands or which may hereafter be placed on them, including dwelling-houses, quarters, barns, stables and other buildings, gin-house, gin-stands, saw-mills, engines and steam-boiler; also, sixty mules, as well as the wagons, carts, and plantation implements.

The said James Dick Partee also hereby sells, transfers and assigns to the said Fountain Barksdale all the right, title, claim and interest which he the said James Dick Partee has in and to the estate of
109 his grandfather, Christopher Todd, deceased, and to all securities, mortgages and liens for the payment and recovery of the same. One portion of said interest he obtained from his mother, M'r's Sarah D. Partee, and is recorded in Maury County, State of Tennessee. One other interest he obtained from Christopher T. Colhoun and is recorded in Yazoo County, State of Mississippi.

The said James Dick Partee also bargains and sells, hypothecates and pledges to the said Fountain Barksdale all the crops of cotton and corn (except the portion that may belong to the freedmen on the plantation aforesaid) that may be raised on the tracts of land aforesaid during the present or any future year, until the full payment of the sum of money aforesaid.

To have and to hold the before-described real estate and personal property unto the said Fountain Barksdale, his heirs and assigns forever, in trust, and upon the following conditions, viz: That the said Fountain Barksdale will permit the said James Dick Partee to retain possession of the before-granted, bargained and sold real estate and personal property until default occurs in the payment of the said thirteen notes, amounting to twenty-seven thousand dollars, or either of them, or any portion thereof; and that upon such default in the payment of said sums or any portion thereof, to the said Nelson, Lamphier & Co., or the holder or holders of said notes (including
110 attorney's fees, should it become necessary to employ an attorney, or the amount which may be due to the said Nelson, Lamphier & Co., for supplies which they may furnish, the said Fountain Barksdale, trustee, shall, if requested by said Nelson, Lamphier & Co., their assigns or representatives, or by the holder or holders of said notes, take possession of said real estate and personal property herein specified, including the cotton & corn crops raised on said plantation, and proceed to sell the same at public auction to the highest bidder, for cash, first giving thirty days' notice of the time and place of selling said real estate, personal, and other property, by publishing the same for that length of time in some public newspaper published in the said county of Yazoo and State of Mississippi, provided there is a newspaper published in said county; and, if there should be none, then by posting notices in three public places in said county of Yazoo, in said State of Mississippi, setting forth the time and place of said sale (the right of appraisement and redemption of said real estate and personal property being waived by the said James Dick Partee), and the said from the proceeds of such sale, after first deducting or defraying the expenses attending the execution of the trust herein specified, shall pay over to the said Nelson, Lamphier & Co., their assigns or representatives,
111 or to the holder or holders of said notes, the sum of twenty-seven thousand dollars, together with the interest that may have accumulated on the same, and the attorney's fees, if any has been incurred, and pay to the said Nelson, Lamphier & Co. the amount which may be

due them for supplies, it being understood and agreed that the said James Dick Partee shall gather and ship to the said Nelson, Lamphier & Co., in New Orleans, for sale, as soon as the same can be gathered and shipped, all the crops of corn and cotton that may be raised from year to year on said tracts of land, except such corn as may be necessary for the use of said plantation, and the proceeds of the same when sold shall be applied, first, to the payment of the supplies which may be furnished by the said Nelson, Lamphier & Co.; secondly, to the payment of the notes aforesaid, made by the said James D. Partee, and, if any balance of the proceeds of the sale shall remain after payment of the supplies and notes aforesaid, then the said balance to be paid to the said James D. Partee.

The said Fountain Barksdale, upon making said sale of real and personal property as herein specified and provided for, shall make to the purchaser or purchasers good, complete, and sufficient titles to the same. But if the said James D. Partee shall well and truly pay at maturity the said thirteen notes, as herein set forth, amounting to
112 twenty-seven thousand dollars, and for supplies which may be furnished by said Nelson, Lamphier & Co., according to the tenor and effect of these presents, then this conveyance to become null and void, otherwise to remain in full force and effect.

And it is agreed by and between the parties hereto that in the event of the death of the said Fountain Barksdale, or of his becoming unable or unwilling to execute the trust herein specified, or fail to do so when requested by the holder or holders of said notes, then the sheriff or acting sheriff of the said county of Yazoo, and State of Mississippi, shall act as trustee to sell and convey title to said real estate and personal property, and whose acts and doings in the premises shall be as binding and as effectual as if the same had been done by the said .

In witness whereof we have hereto set our hands and seals the day and year first above written.

JAMES DICK PARTEE. [SEAL.]
JEANIE PARTEE. [SEAL.]

I accept this trust.

FOUNTAIN BARKSDALE. [SEAL.]

STATE OF MISSISSIPPI,
Yazoo County:

Personally appeared before me, M. A. Jenkins, clerk of the probate court of the county *of the county* of Yazoo, James Dick Partee & Jeanie Partee, his wife, who acknowledged that they signed, sealed, and delivered the foregoing instrument of writing on the day and
113 year and for the purposes therein written as their act and deed; and the said Jeanie Partee, being privately examined by me, separate and apart from her husband, acknowledged that she signed, sealed, and delivered the same freely, without any fear, threats, or compulsion of her said husband, as her voluntary act and deed.

Given under my hand and official seal this 14th day of January, A. D. 1869.

[SEAL.] M. A. JENKINS, *Clerk.*

Filed 14th Jan'y, 1869. Recorded Jan'y 15, 1869. $33 stamps on deed.

M. A. JENKINS, *Clerk.*
By M. W. SMITH, *D. C.*

THE STATE OF MISSISSIPPI,
Yazoo County:

I, J. M. Sublett, clerk of the chancery court of said county, do hereby certify that the foregoing nine pages contain a true and correct copy & transcript of the deed from James D. Partee & wife to F. Barksdale, trustee, together with the certificates and proofs thereof, as fully & completely as the same appears & remains of record in my office, in book Y, on pages 389, 390, 391, & 392 of the records of deeds of said county & State.

Given under my hand & seal of office this 10th day of February, A. D. 1873.

[SEAL.] J. M. SUBLETT, *Cl'k.*
By N. T. PUGH, *D. C.*

(Endorsed:) Filed with bill 1 Ap'l '73. Geo. T. Swann, cl'k.

114 EXHIBIT J.

James Dick Partee, et ux., to Fountain Barksdale, trustee.

Nelson, Lamphier & Co.

This indenture made and entered into this, the 24th day of February, A. D. eighteen hundred and seventy, by and between James Dick Partee and Jeannie Partee, his wife, of the county of Yazoo and State of Mississippi, of the first part, Fountain Barksdale, of the county of Yazoo and State of Mississippi, of the second part, and Stephen O. Nelson, Thomas A. Nelson, and James S. Lamphier, merchants and partners doing business in the city of New Orleans, in the State of Louisiana, under the firm and style of Nelson, Lamphier & Co., of the third part, witnesseth:

That the said James Dick Partee is justly and truly indebted to the said Stephen O. Nelson, Thomas A. Nelson, and James S. Lamphier, merchants and partners doing business in the name and under the firm of Nelson, Lamphier & Co., as aforesaid, in the sum of thirty-three thousand & five hundred $\frac{00}{100}$ dollars, being the amount of his, James Dick Partee's twelve notes bearing date the twenty-first day of February, A. D. eighteen hundred and seventy, drawn payable to his own order, and by him endorsed, payable at the counting-house of said Nelson, Lamphier & Co., in the city of New Orleans, conditioned to bear interest at the rate of ten per cent. per annum after maturity, until
115 paid, as follows, to wit, one note due on the sixth day of November, 1870, for twenty-five hundred dollars; one note due on the tenth day of November, 1870, for twenty-five hundred dollars; one note due on the twenty-fourth day of November, 1870, for fifteen hundred dollars; one note due on the twenty-fourth day of November, 1870, for two thousand dollars; one note due on the seventh day of December, 1870, for twenty-five hundred dollars; one note due on the eighteenth day of December, 1870, for three thousand dollars; one note due on the twenty-sixth day of December, 1870, for fifteen hundred dollars; one note due on the fifteenth day of January, 1871, for five thousand dollars; one note due on the fifteenth day of January, 1871, for five thousand dollars; one note due on the eighteenth day of January, 1871, for thirty-five hundred dollars; one note due on the eighteenth day of January, 1871, for twenty-five hundred dollars; one note due on the eighteenth day of January, 1871, for two thousand dollars. In all, thirty-three

thousand five hundred dollars; and also, for the further sum of eight thousand dollars, to cover any supplies which the said Nelson, Lamphier & Co. may furnish him to cultivate his lands, and on which they are to charge him eight per cent. interest, and two & one-half per cent. for advancing or accepting.

116 And whereas the said James Dick Partee is desirous to secure the punctual payment of the same, this indenture witnesseth:

That the said James Dick Partee and Jennie Partee, his wife, in consideration of the premises, and in consideration of the further sum of ten dollars to him paid by the said Fountain Barksdale, the receipt of which is hereby acknowledged, have granted, bargained, and sold, and by these presents doth grant, bargain, and sell unto the said Fountain Barksdale the following real estate and personal property situated in the county of Yazoo and State of Mississippi, together with all the improvements and rights thereunto belonging, to wit, the plantation situated in the county of Yazoo and State of Mississippi, known as "No Mistake" plantation, and also embracing "Tyrone" and "Seven Gums" plantations, described as follows: The south half of section nine, northeast quarter, and south half of northwest quarter, and south half of section ten; west half of northeast quarter & northwest quarter, and south half of section eleven; all of section fourteen; north half and east half of southeast quarter of section fifteen; north half and southeast quarter of section twenty-three; west half of section twenty-four, township nine, range four west, together with the improvements now existing on said lands, or which may hereafter be placed on them,

117 including dwelling-house, store-house quarters, barns, stables, gin-house, gin-stands, saw-mills, engines, steam-boilers, and machinery; also, all the mules on said plantation, say sixty-two (62) in number, as well as the wagons, carts, and plantation implements now on said plantations.

The said James Dick Partee also hereby sells, transfers, and assigns to the said Fountain Barksdale all the right, title, claim, and interest which he, the said James Dick Partee has in and to the estate of his grandfather, Christopher Todd, deceased, and to all securities, mortgages, and liens for the payment and recovery of the same. One portion of said interest he obtained from his mother, M'r's Sarah D. Partee, and is recorded in Maury County, State of Tennessee; one other interest he obtained from Christopher T. Colhoun.

The said James Dick Partee also bargains, sells, hypothecates, and pledges, to the said Fountain Barksdale, all the crops of cotton, hay, and corn (except the portion that may belong to the freedmen on the aforesaid plantations) that may be raised on the tracts of land aforesaid during the present or any future year or years, until the full payment of the sum of money as aforesaid.

To have and to hold the before mentioned or described real and personal property unto the said Fountain Barksdale, his heirs and

118 assigns forever. In trust, nevertheless, and upon the following conditions, viz: That the said Fountain Barksdale will permit the said James Dick Partee to retain possession of the before granted, bargained, and sold real estate and personal property until default occurs in the payment of the said twelve notes, amounting to the sum of thirty-three thousand and five hundred $^{00}/_{00}$ dollars, or either of them, or any portion thereof, and that upon such default in payment of said sums or any portion thereof to the said Nelson, Lamphier & Co., or the holder or holders of said notes (including attorney's fee should it become necessary to employ an attorney), or the amount which may be due to

the said Nelson, Lamphier & Co., for supplies which they may furnish, then the said Fountain Barksdale, esq., trustee, shall, if requested by said Nelson, Lamphier & Co., their assigns or representatives, or by the holder or holders of said notes, take possession of said real estate and personal property herein specified, including the cotton, corn, and hay crops raised on said plantations (except the freedmen's portion) and proceed to sell the same at public auction to the highest bidder for cash, first giving thirty days' notice of the time and place of selling said real estate and personal & other property by publishing the same for
that length of time in some public newspaper published in said
119 county of Yazoo and State of Mississippi, provided there is at
the time a newspaper published in said county of Yazoo, and if there should be none, then by posting notices in three public places in said county of Yazoo, in said State of Mississippi, setting forth the time and place of said sale (the right of appraisement & redemption of said real estate and personal property being waived by the said James Dick Partee) and the said Fountain Barksdale, from the proceeds of such sale, after first deducting or defraying the expenses attending the execution of the trust herein specified, shall pay over to the said Nelson, Lamphier & Co., first the amount which may be due to them for supplies which they may have furnished, not exceeding in amount eight thousand dollars, as well as interest and commissions on the same, and, secondly, shall pay over to the said Nelson, Lamphier & Co., their assigns or representatives, or the holder or holders of said notes, the said sum of thirty-three thousand & five hundred dollars, together with the interest that may have accumulated on the same and the attorneys' fees, if any may have been incurred, and then if any funds still remain in the hands of said Fountain Barksdale, after paying and discharging the obligations aforesaid, then the residue to be by him paid over to the said James Dick Partee.

120 It is understood and agreed that the said James Dick Partee shall gather and ship to the said Nelson, Lamphier & Co., for sale on his account, as soon as the same can be gathered and shipped, all of the cotton that may be raised from year to year on said plantations or on any other land that he may cultivate (so long as the supplies aforesaid or notes aforesaid or any portion of them shall remain unpaid) except freedmen's portion. The said Fountain Barksdale, upon making said sale of real and personal property as herein specified and provided for, shall make to the purchaser, or purchasers, good, complete, and sufficient titles to the same. But if the said James Dick Partee shall well and truly pay at maturity the said twelve notes as herein set forth, amounting to thirty-three thousand & five hundred $\frac{00}{100}$ dollars, and for the supplies which may be furnished by the said Nelson, Lamphier & Co., according to the tenor and effect of those presents, then this conveyance to become null and void, but otherwise to remain in full force and effect.

And it is agreed by and between the parties hereto that in the event of the death of the said Fountain Barksdale or of his becoming unable or unwilling to execute the trust herein specified, or fails to do so when
requested by the holder or holders of said notes, then the sheriff
121 or acting sheriff of the said county of Yazoo and State of Mississippi, shall act as trustee to sell and convey title to the said real estate and personal property, and whose acts and doings in the premises shall be as binding and as effectual as if the same had been done by the said Fountain Barksdale.

In witness whereof we have hereunto set our hands and seals the day and year first above written.

JA'S D. PARTEE. [SEAL.]
JEANIE PARTEE. [SEAL.]
I accept the trust. F. BARKSDALE. [SEAL.]
NELSON, LAMPHIER & CO. [SEAL.]

THE STATE OF MISSISSIPPI,
County of Yazoo:

Personally appeared before W'm Richards, a justice of the peace in and for the county of Yazoo and State aforesaid, the within mentioned James Dick Partee, and Jeanie Partee, his wife, who severally acknowledged that they signed, sealed, and delivered the foregoing deed of trust as their act and deed, and for the purposes therein mentioned, and on the same day personally appeared the said M'r's Jeanie Partee, who acknowledged on a private examination, separate and apart from her said husband, that she signed, sealed, and delivered the foregoing deed as her voluntary act and deed, freely and without any fear, threat,
122 or compulsion of her said husband on the day & year therein mentioned.

Given under my hand and seal this the twenty-fourth day of February, 1870.

[SEAL.] W'M RICHARDS, *J. P.*

Filed & recorded Feb. 25, 1870.
$42.50 I. R. stamps.

S. GALINGER, *Clk.*

THE STATE OF MISSISSIPPI,
Yazoo County:

I, J. M. Sublett, clerk of the chancery court of said county, hereby certify that the foregoing ten pages & the upper portion of this page contain a true & correct copy and transcript of the deed of trust from James D. Partee & wife to Fountain Barksdale, trustee, together with the certificates & proofs thereof, as fully & completely as the same appears & remains of record in my office in book Z, on pages 608, 609, 610, 611, & 612, of the records of deeds of Yazoo County, said State.

Given under my hand and seal of office this 11th day of February, A. D. 1873.

[SEAL.] J. M. SUBLETT, *Clk,*
By N. F. PUGH, *D. C.*

(Endorsed:) Filed with bill, 1 Ap'l, '73. Geo. T. Swann, cl'k.

123 EXHIBIT K.

James Dick Partee, for Nelson, Lamphier & Co. F. Barksdale, trustee.—Trust deed.

This indenture, made and entered into this the tenth day of August, in the year eighteen hundred and seventy-one (1871), between James Dick Partee, of the county of Yazoo and State of Mississippi, of the first part, and Stephen O. Nelson, Thomas A. Nelson, and James S. Lamphier, merchants and partners doing business in the city of New Orleans and

State of Louisiana, under the firm and style of Nelson, Lamphier & Co.' parties of the second part, witnesseth

That whereas, the said party of the first part being indebted to the parties of the second part on the 21st day of February, 1870, in the sum of thirty-three thousand five hundred dollars, being the amount of his, James Dick Partee's twelve (12) notes bearing date the (21st) twenty-first day of February, 1870, and particularly described in a deed of trust executed by said James D. Partee to secure the same, dated the 24th day of February, A. D. 1870, duly recorded in deed book Y, page 608, 609, 610, 611, & 612, of records of deeds of Yazoo County, Mississippi, wherein the said James D. Partee conveyed to Fountain Barksdale, as trustee, *and* and singular certain personal property and certain real
124 estate, to wit, the "No Mistake" plantation, and also "Tyrone" and "Seven Gums" plantations of the said James Dick Partee, situated in Yazoo County, Mississippi, and particularly described in said deed of trust which was intended to secure the aforesaid twelve promissory notes, as also certain advances in supplies, &c., to be made in the year 1870 by the parties of the second part to the said party of the first part; and whereas said supplies for the year 1870 have been paid off, but said twelve promissory notes are still due and unpaid with interest on the same as specified in said deed of trust; and whereas, on the 8th day of April, 1871, said parties of the second part, at the request of said party of the first part, paid his draft in favor of Edw'd Drenning for the sum of two thousand dollars, being in part payment of a judgment in favor of the estate of Christopher Todd, dec'd, and which bore the first lien on his "No Mistake" plantation, and for which he, the said party of the first part, has executed to said parties of the second part his note for the sum of two thousand dollars ($2,000), dated this day and payable on the 10th December next, with interest at the rate of ten per cent. per annum; and whereas the said party of the second part have furnished said party of the first part goods, monies, and supplies to enable him to cultivate his crops and work his plantations,
125 amounting up to this time to the sum of fifteen hundred and fifteen $\frac{11}{100}$ dollars ($1,515.11) cash, and for which he has this day executed to said parties of the second part his note payable on the 15th December next, with ten per cent. interest from date, say from 10th August, 1871, both of these notes payable at the counting-house of Nelson, Lamphier & Co., New Orleans; and whereas the parties of the second part undertake and agree to furnish to the said party of the first part the means which may be necessary to cover his personal expenses and plantation supplies of his said plantation up to the 1st day of March, 1872, so as to enable the party of the first part to cultivate, harvest, and ship his crops, the said supplies to be furnished either in goods, money, or materials, but in all, from this time to the 1st day of March next, not to exceed the sum of six thousand dollars ($6,000); and whereas the said party of the first part desires to secure the prompt and faithful payment of the said sums to the said parties of the second part, viz, the note of ($2,000) two thousand dollars as aforesaid, the note of fifteen hundred and fifteen $\frac{11}{100}$ dollars as aforesaid, as well as to secure to them all monies they may hereafter pay for him, said party of the first part, between this time and the 1st of March next, for plantation
126 supplies, freights on same, or may pay for him for purposes of personal expense, &c., together with interest on the same at the rate of eight per cent. per annum, and two and one-half per cent. for advancing, the same not to exceed the sum of six thousand dollars as aforesaid:

Now, therefore, in consideration of the premises, and in consideration of the further sum of ten dollars cash in hand paid to the party of the first part by Fountain Barksdale, the receipt of which is hereby acknowledged, the said party of the first part has this day granted, bargained, and sold, pledged and hypothecated, and by these presents does hereby grant, bargain, sell, pledge and hypothecate, to the said Fountain Barksdale, as trustee herein, his heirs forever, the crops of cotton, corn, hay, and other agricultural productions that may be made as the crops of 1871 on the aforesaid plantation' of "No Mistake," "Tyrone," "Seven Gums," or that may be made on the plantation known as "Lake Dick," which he, the said party of the first part, is this year cultivating, except, however, such portions of the agricultural productions raised in said year of 1871 on the said plantations of "No Mistake," "Tyrone," "Seven Gums," and "Lake Dick" as may belong to the freedmen or laborers on said plantations.

And the said party of the first part covenants to and with the
127 said parties of the second part, and to and with the said Fountain Barksdale, trustee herein, that he will cultivate, gather, and put into merchantable and *and* marketable condition, as soon as practicable, the whole cotton crop raised or to be raised on said plantation in the year 1871 as aforesaid, and deliver the cotton as fast as baled and hauled to the said parties of the second part, to be by them sold, and the nett proceeds thereof after paying expenses to be applied as follows, to wit: First, to pay off and discharge the note given by said party of the *second* part as aforesaid of fifteen hundred and fifteen $\frac{11}{100}$ dollars, together with interest on same, it being for supplies already furnished; secondly, to be applied to the payment of any supplies, either personal or plantation, that may be hereafter furnished or be paid for by the parties of the second part between now and the 1st day of March next, the' being furnished at the instance of the party of *the party of* the first part, but not to exceed the sum of six thousand dollars as aforesaid; thirdly, to be applied to the payment of principal and interest of the note of ($2,000) two thousand dollars as aforesaid, which has been executed by the party of the first part in consideration of the payment to the estate of Christopher Todd as aforesaid; and fourthly, to
pay over the residue to the said parties of the second part,
128 their assigns or representatives, or the holder or holders of said promissory notes described in the deed of trust referred to as being recorded in deed-book Y as aforesaid, and after this, if any surplus should remain, the same to be paid over to the said James D. Partee. In the event the said party of the first part make default herein and fails, neglects, or refuses to cultivate, gather, and deliver said cotton crops as herein stipulated, or fails to deliver the same in accordance with the terms of this instrument, or otherwise makes default, then and in that case the said Fountain Barksdale shall, as trustee herein, and to that end he is hereby fully empowered and directed to enter upon said plantations and complete the cultivation, gathering, and putting into marketable condition the aforesaid crops of cotton, and he shall ship the same to market in New Orleans, cause the same to be sold, and then apply the nett proceeds as herein provided.

It is agreed and understood that the corn and hay raised on said plantations shall first go towards feeding an' maintaining the animals on the said plantations, and the surplus, whatever it may be, is subject to be sold under this trust.

It is expressly agreed and understood that the execution of this deed of trust shall not in any way, manner, or form impair any security now

existing for the payment of the twelve promissory notes aforesaid, and particularly that it shall not impair the security of the
129 deed of trust recorded in book Z as aforesaid, given to secure the same.

It is further agreed by and between the parties hereto that in the event of the death of the said Fountain Barksdale, or of his becoming unable or unwilling to execute this trust, then in that case the sheriff or acting sheriff of said Yazoo County shall act in his stead, and whose acts and doings in the premises will be equally binding as tho' done by the said Fountain Barksdale in person.

In witness whereof the parties to this instrument have hereunto set their hands and seals the day and year first above written.

JA'S D. PARTEE. [SEAL.]
F. BARKSDALE. [SEAL.]
NELSON, LAMPHIER & CO. [SEAL.]

STATE OF MISSISSIPPI,
Yazoo County:

Personally appeared before me, S. Galinger, clerk of the chancery court of said county, James D. Partee, Fountain Barksdale, and Stephen O. Nelson (signing for the firm of Nelson, Lamphier & Co.), and severally acknowledged that they signed, sealed, and delivered the same on the day of its date as their act and deed.

130 Given under my hand and seal of office this 11th day of August, A. D. 1871.

[SEAL.] S. GALINGER, *Clk.*

Filed August 11th, 1871. Recorded August 12th, 1871. $4.00 I. R. stamps affixed.

S. GALINGER, *Clk.*,
Per N. A. STEWART.

THE STATE OF MISSISSIPPI,
Yazoo County:

I, J. M. Sublett, clerk of the chancery court of said county, do hereby certify that the foregoing nine pages contain a true & correct copy & transcript of the deed of trust from James D. Partee to Nelson, Lamphier & Co., together with the certificates & proofs thereof, as fully & completely as the same appears & remain of record in my office, in book D D, on pages 673, 674, 675, 676, & 677 of the records of deeds of Yazoo County, Mississippi.

Given under my hand and seal of office this 13th day of February, A. D. 1873.

[SEAL.] J. M. SUBLETT, *Clk.*,
By N. T. PUGH, *D. C.*

(Endorsed:) Filed 1 Ap'l, '73, with bill. Geo. T. Swann, cl'k.

EXHIBIT L.

131 *James D. Partee to F. Barksdale, trustee, Nelson, Lamphier & Co.—Trust deed.*

This indenture, made and entered into this the twenty-sixth day of April, eighteen hundred and seventy-two (1872), between James Dick Partee, of the county of Yazoo and State of Mississippi, of the first part, and Stephen O. Nelson, Thomas A. Nelson, and James S. Lamphier,

merchants and partners doing business in the city of New Orleans, State of Louisiana, under the firm and style of Nelson, Lamphier & Co., parties of the second part, witnesseth:

That whereas the said party of the first part being indebted to the party of the second part, on the 21st day of February, 1870, in the sum of thirty-three thousand five hundred dollars, being the amount of his (James D. Partee's) twelve notes, bearing date the twenty-first day of February, 1870, and particularly described in a deed of trust executed by said James D. Partee to secure the same, dated 24th February, 1870, and duly recorded in deed-book Z, pages 608, 609, 610, 611, & 612 of records of deeds of Yazoo County, Mississippi, wherein the said James D. Partee conveyed to Fountain Barksdale, trustee, all and singular, certain personal property and certain real estate, to wit, the "No Mistake" plantation; also, "Tyrone" & "Seven Gums" plantations, of the said James D. Partee, situated in the county of Yazoo, Mississip-
132 pi, and *and* particularly described in said deed of trust, which was intended to secure the aforesaid twelve promissory notes, as also certain advances in supplies, &c., to be made in the year 1870 by the parties of the second part to the said party of the first part; and whereas said supplies for the year 1870 have been paid off, but twelve said promissory notes are still due and unpaid, with interest on the same, as specified in said deed of trust; and whereas said party of the second part have furnished said party of the first part since the first day of March last goods and supplies to enable him to make a crop on which is known as "Lake Dick" plantation, amounting to five hundred and sixty-two $\frac{75}{100}$ dollars, for which he has this day executed his note in their favor, due on the 10th day of January next, for the said sum of $562.78, payable at the counting-house of said Nelson, Lamphier & Co., in New Orleans, conditioned to bear interest at the rate of eight per cent. per annum from date; and whereas said party of the second part agree also to furnish said party of the first part with the needful supplies up to the first of February next to enable him to make and harvest the crop on said "Lake Dick" plantation, as well as to furnish him a reasonable amount for personal expenses, the whole note to exceed four thou-
133 sand dollars; and whereas the *the* said party of the first part desires to secure to the party of the second part the prompt and faithful payment of said sum of $562.78, and interest on same, as well as the amount which may hereafter be furnished him in the shape of plantation supplies and for personal expenses as aforesaid up to the said 1st February next, with interest on same at the rate of eight per cent. per annum, the latter not to exceed the aforesaid sum of five thousand dollars:

Now, therefore, in consideration of the premises, and in consideration of the further sum of ten dollars, cash in hand, paid to the party of the first part by Fountain Barksdale, the receipt of which is hereby acknowledged, the party of the first part has this day granted, bargained, and sold, pledged, and hypothecated, and by these presents doth hereby grant, bargain, sell, pledge, and hypothecate, to the said Fountain Barksdale, as trustee herein, his heirs forever, the crops of cotton, corn, & hay that may be raised this year, 1872, on the plantation known as "Lake Dick," which he, the said party of the first part, is this year cultivating, except, however, such portion of said crops as may belong to the freedmen or laborers on said plantation. And the said party of the first part covenants to and with the said parties of the second part, and to and with the said Fountain Barksdale, trustee herein, that he
134 will cultivate, gather, and put into merchantable and marketable

condition the whole cotton crop raised or to be raised on said "Lake Dick" plantation in the year 1872 as aforesaid, and deliver the cotton as fast as baled to the said parties of the second part, to be by them sold, and the nett proceeds thereof, after paying expenses, to be applied as follows, to wit: First, to pay off and discharge the note given by said James D. Partee of $562.78 as aforesaid, together with the interest that may have accumulated on the same. Second, to pay off and discharge the amount for future supplies and for personal expenses which, as before stated, are not to exceed the sum of four thousand dollars, to be furnished by the party of the second part; and, thirdly, to pay over the residue to the said parties of the second part, their assigns or representatives, or to the holder or holders of said promissory notes described in the deed of trust referred to as being recorded in deed-book Z as aforesaid, *day* of thirty-three thousand five hundred dollars, and after this, if any surplus should remains, the same to be paid over to the said James D. Partee. In the event that the said party of the first part make default herein and fail, neglect, or refuse to
135 cultivate, gather, and deliver said cotton crop as herein stipulated, or fail to deliver the same in accordance with the terms of this instrument, or otherwise make default, then and in that case the said Fountain Barksdale shall, as trustee herein, and to that end he is hereby fully empowered and directed, to enter upon said "Lake Dick" plantation and complete the cultivation, gathering, and shipping of the said cotton to New Orleans as herein stipulated, and the proceeds to be applied as before mentioned.

It is agreed and understood that the corn and hay raised on said plantation shall first go towards feeding and maintaining the animals on the place, and the surplus, whatever it may be, is subject to be sold under this trust.

It is expressly agreed and understood that the execution of this deed of trust shall not in any way, manner, or form impair any security now existing for the payment of the twelve promissory notes aforesaid, and particularly that it shall not impair the security of the deed of trust recorded in deed-book Z as aforesaid, given to secure the same.

It is further agreed by and between the parties hereto that, in the event of the death of the said Fountain Barksdale, or of his becoming unable or unwilling to execute this trust, then and in that case the sheriff or acting sheriff of said county of Yazoo shall act in his stead-
136 and whose acts and doings in the premises will be equally binding as *the* done by the said Fountain Barksdale in person.

In witness whereof the parties to this instrument have hereunto set their hands and seals the day and year first above written.

JA'S D. PARTEE. [SEAL.]
F. BARKSDALE, [SEAL.]
Trustee.
NELSON, LAMPHIER & CO.

THE STATE OF MISSISSIPPI,
Yazoo County:

Personally appeared before me, J. M. Sublett, clerk of the chancery court of said county and State, the within-named Ja's D. Partee, F. Barksdale, and T. O. Nelson, who acknowledged that they signed, sealed, and delivered the foregoing deed in trust on the day and year therein mentioned as their act and deed.

Given under my hand and seal of office this 26th day of April, A. D. 1872.

[SEAL.] J. M. SUBLETT, *Clk.*

Filed & recorded April 26th, 1872. $2.50 I. R. stamps affixed.
J. M. SUBLETT, *Clk*,
P'r ROSS.

THE STATE OF MISSISSIPPI,
Yazoo County:

I, J. M. Sublett, clerk of the chancery court of said county, do
137 hereby certify that the foregoing seven pages & the upper portion of this page contain a true & correct copy & transcript of a deed of trust from James D. Partee to Nelson, Lamphier & Co., together with the certificates & proofs thereof, as fully and completely as the same appears & remains of record in my office in book "G G," on pages 303, 304, 305, & 306 of the records of deeds of Yazoo County, Mississippi.

Given under my hand and seal of office this 13th day of February, A. D. 1873.
[SEAL.]
J. M. SUBLETT, *Clk*,
By N. T. PUGH, *D. C.*

(Endorsed:) Filed with O. B. 1 April, '73. Geo. T. Swann, cl'k.

EXHIBIT M.

Ja's D. Partee et ux., per trustee, to Tho's A. Nelson.—Deed.

Whereas Fountain Barksdale, as trustee to the deed of trust executed on the 24th day of February, in the year eighteen hundred and seventy, by James D. Partee and Jennie Partee, his wife, to secure certain notes therein mentioned, made by the said James D. Partee, payable to his own order and by him endorsed to Nelson, Lamphier & Co., the said deed of trust having been recorded in the office of the
138 probate clerk, in the county of Yazoo, and State of Mississippi, in book Z, pages 608, 609, 610, 611, & 612, did, after giving due notice of the time, place, and terms of sale as required by said deed, and at the request of the holders of said notes, and for the purpose of paying the balance due on the same, offer for sale to the highest bidder for cash, in front of the court-house in Yazoo City, Yazoo County, and State of Mississippi, all of the lands or real estate included in said deed of trust; and whereas, Thomas A. Nelson at said sale became the purchaser of all of the different tracts of said land, as hereinbefore mentioned, his being the highest, best, and last bids for the same, it was struck off to him, viz: South half of section 9, township 9, range 4 west, for three hundred dollars; N. E. ¼ & south ½ of N. W. ¼, & south ½ of section 10, township 9, range 4 west, for six hundred dollars; west ½ of N. E. ¼, & N. W. ¼ & south ½ of section 11, township 9, range 4 west, for six hundred dollars; all of section 14, township 9, range 4 west, for six hundred dollars; north ½ section 15, E. ½ of S. E. ¼ of section 15, township 9, range 4 west, for two hundred dollars: north ½ of section 23, S. E. ¼ of section 23, township 9, range 4 west, for five hundred dollars; west ½ of section 24, township 9, range 4 west, for three hundred
139 dollars; and whereas, the said Thomas A. Nelson was declared to be the purchaser thereof:

Now this indenture witnesseth, That for and in consideration of the premises aforesaid, and of the payment by the said Thomas A. Nelson of the sum of three thousand one hundred dollars aforesaid, to the said Fountain Barksdale, the receipt of which is hereby acknowledged, the

said Barksdale, trustee as aforesaid, hereby grants, bargains, sells, aliens, and conveys, and by these presents doth sell, alien, and convey to the said Thomas A. Nelson and his heirs and assigns, the following described tracts or parcels of land situated in the county of Yazoo, and State of Mississippi, to wit: south half of section 9, N. E. ¼, & south ½ of N. W. ¼. & south ½ of section 10; west ½ of N. E. ¼, & N. W. ¼ & south ½ of section 11; all of section 14 north ½ of section 15; E. ½ of S. E. ¼ of section 15; north ½ of section 23; S. E. ¼ of section 23; west ½ of section 24, all in township 9, range 4 west.

To have and to hold the aforesaid tracts of land, together with the improvements and appurtenances of every kind thereon appertaining thereto to the said Thomas A. Nelson, his heirs and assigns, it being understood that said Barksdale only conveys such title as is vested in him by reason of said trust deed, and no other.

140 In testimony whereof the said Barksdale hereunto sets his hand or signature, and affixes his seal on this the 15th day of June, in the year 1872.

FOUNTAIN BARKSDALE, [SEAL.]
Trustee.

The words "grants" interlined before signing, page 3.

THE STATE OF MISSISSIPPI,
Yazoo County:

Personally appeared before me, J. M. Sublett, clerk of the chancery court of said county and State, the within named Fountain Barksdale, who acknowledged that he signed, sealed, and delivered the foregoing deed as trustee on the day and year therein mentioned as his act and deed.

Given under my hand and seal of office this 15th day of June, A. D. 1872.

J. M. SUBLETT, *Clerk*,
By N. T. PUGH, *D. C.*

Filed June 15th, 1872. Recorded June 15th, 1872. $3.50 I. R. stamps affixed.

J. M. SUBLETT, *Clerk*,
P'r HUBBELL.

THE STATE OF MISSISSIPPI,
Yazoo County:

I, J. M. Sublett, clerk of the chancery court of said county, do
141 hereby certify, that the foregoing four pages contain a true & correct copy & transcript of the deed from James D. Partee & wife, per trustee, to Tho's A. Nelson, together with the certificate and proofs, as fully & completely as the same appears & remain, of record in my office in book H H, on pages 588 & 589 of the records of deeds of Yazoo County, Mississippi.

Given under my hand and seal of office this 14th day of February, A. D. 1873.

[SEAL.]

J. M. SUBLETT, *Cl'k*,
By N. T. PUGH, *D. C.*

(Indorsed:) Filed with bill, 1 Ap'l, '73. Geo. T. Swann, cl'k.

And on the same day & date of the filing of the aforesaid bill & ex-

hibits, to wit, April 1st, 1873, a subpœna issued from the clerk's office of said court, which said subpœna has not been returned into court.

And afterwards, to wit, on the 30th day of April, A. D. 1873, the answer of Robert Bowman was filed in the clerk's office of said court, which, with the exhibits (2) thereto are in the words & figures following, to wit:

Answer of Robert Bowman.

To the honorable the judge of the circuit court of the United States for the southern district of Mississippi. Sitting in equity.

The separate answer of Robert Bowman to a bill of complaint
142 exhibited against himself in this honorable court by the president and directors of Canal Bank of Louisiana, et als.

This respondent saving and reserving to himself all manner of exceptions to the manifold errors and misstatements and falsehoods in said bill of complaint contained, for answer thereto, or so much thereof as he is advised is material for him to, answering says: That from information derived from W. B. Partee he believes it to be true that said Sarah D. & W'm B. Partee were indebted to said complainants on the 19th of November, 1866, upon contracts (being promissory notes) made before the late war, but respondent denies all knowledge of their indebtedness as evidenced by said promissory notes to said complainants as charged in said bill to be due on the 1st days of January, 1868, 1869, 1870, 1871, and 1872, exhibited by exhibits to said bill which he has recently seen.

Respondent, from his information and belief, says that the novation of said original notes, or contracts, as they are termed in said bill, was not consummate and complete on the 19th of November, 1866, and as this respondent is informed, advised, and believes, never was consummated.

Respondent admits the execution of said deed to him, but says that, as he was informed by said William B. and Sarah D. Partee, it
143 was for all the creditors named therein, and not for complainants alone, and that said trust deed embraced all their creditors except James Stewart, who had previous to that time obtained a judgment against said Sarah D. & W'm B. Partee in the circuit court of Yazoo.

Respondent further answering says that as far as his knowledge & information extends the said complainants did not avail themselves of the terms of said trust deed, and denies that if they, or either of them, or any of the creditors embraced in said trust deed ever did so, that he never received notice thereof.

Respondent further answering says, that sometime in January, 1867, he had a conversation with M'r Hyams, who purported to be the attorney of said complainants, the Canal & Crescent City Bank as well as some other of said creditors in the city of New Orleans, who stated that he would advise his clients to accept said trust deed. This respondent then stated to him, the said attorney, that said acceptance must be in writing, within ninety days from the date of said deed, according to its terms; otherwise, the deed would be invalid. Respondent further stated to said Hyams that if he acted as trustee, according to the terms thereof, that it would be necessary to furnish money for the payment of taxes on said lands in said deed mentioned as
144 *as* part payment of said original notes. Respondent says that

he then supposed and understood from said conversation that said attorney would inform him of the acceptance of his clients, if they agreed to accept said deed, but he failed to do so, failed to furnish the money for the payment of said taxes, and never wrote to him in regard thereto, or sent any acceptance thereof. Respondent says with this exception none of said creditors ever communicated with him on the subject of said deed except in the year 1867, by said attorney, as will be hereafter stated.

Respondent further answering says, that a few days after he left for his home in Yazoo City, and heard nothing more about the intention of said parties to accept said deed.

Respondent further answering says, that on or about the 20th of April, 1867, the said Crescent City Bank, and the said Canal Banking Company, brought their suits in the circuit court of Yazoo County, Mississippi, for the recovery of the amount of the original notes, as respondent is informed and believes, due by said Sarah D. & W'm B. Partee at the date of said trust deed, and recovered judgments thereon, as will more fully appear by reference to certified copies of the proceedings
145 in, and judgments on, said suits herewith filed, marked "Exhibits 1 & 2," respectively.

Respondent further answering says, that before, & perhaps, afterwards, a number of other of said creditors embraced in said trust, brought their suits upon the original claims intended to be commuted or paid by the new notes of said Sarah D. & W. B. Partee, as provided therein. This respondent says that by reason of said suits by the failure of said creditors or said W. B. & Sarah D. Partee to give him any notice of their acceptance of said deed and by their failure to call upon him in any manner to act, that, as he is advised, said trust failed & this respondent was released from the performance thereof. Respondent is therefore advised and so says that the limitation of ninety days for the acceptance of said terms of said deed was valid in law, and not against public policy as charged and that said deed is a nullity. Respondent admits that he wrote said trust deed, but denies that he had anything to do with the settlement of said original notes, or that he done or performed any labor in that respect except the writing of said deed. Admits that the firm of Wilkinson & Bowman wrote a letter to the effect and tenor as mentioned in said bill addressed to said attorneys in New Orleans, mentioned, but as no copy of said letter was re-
146 tained, can neither admit nor deny that Exhibit B to said bill is a correct copy.

Respondent further answering says, that it is true as stated in said bill, that this respondent and his late partner, George B. Wilkinson, now deceased, did believe that said security at that time would be amply sufficient to pay said novated notes, and the said James Stewart, who held said judgment, was willing, if said Sarah D. & W. B. Partee, would pay him in a short time, make a deduction from his judgment and settle on liberal terms. The said Partee had then promised to pay said judgment about the 1st of January, 1867. Respondent knows nothing of said proposition of M'r's Sarah D. Partee as charged in said bill as marked "Exhibit C."

This respondent further answering says, that he never saw or heard of said receipt, marked "Exhibit D" to said bill, until the commencement of this suit.

Respondent further answering says, that of said creditors named in said receipt who had accepted the terms of said trust deed by surrendering the old indebtedness, and received in novation the new notes of

said Sarah D. & W. B. Partee, the said Crescent City Bank, W'm Silliman, C. C. Peek, Richard A. Bartley, and as respondent now remembers, some others named in said receipt, had brought suit on said
147 original indebtedness alleged to have been novated at the date of said alleged receipt in the circuit court of Yazoo County upon said indebtedness, and either before or afterwards had obtained judgment upon the same, which said judgments are still in force and unreversed. Admits the suit and judgment by Ja's Stuart, and that Wilkinson & Bowman were his attorneys. Admits the release of errors by Sarah D. & W'm B. Partee as charged, but denies that it was pretended. Admits the prosecution of said writ of error by said Sarah D. & W. B. Partee. Denies and denounces as wholly untrue that said Sarah D. & W. B. Partee and this respondent fraudulently procured said writ to be dismissed fraudulently to hinder, delay, and defraud creditors, and says that this charge as to respondent is maliciously false. Respondent, on the contrary says that said writ of error was sued out without the knowledge of respondent at the time by J. C. Prewitt, the attorney of said Sarah D. & W'm B. Partee. This respondent says on the contrary that the proceedings upon said writ of error in the high court of errors and appeals shows that said Stuart, by his attorneys, Wilkinson & Bowman, pleaded said release of errors to said writ, and upon said plea the judgment of said circuit court was on the 9th day of November, 1868,
148 duly affirmed by said high court of errors and appeals. Respondent does not know, as he is not advised, what motive or reason prompted said S. D. & W. B. Partee to sue out said writ, but supposes it was for delay. Respondent is advised and believes that the service of process in said case of Stuart vs. Partee & wife, and said judgment and release of errors are good and valid in law, but even if they had been defective, respondent is advised that the said Sarah D. & W. B. Partee and said complainants are estopped by said judgment of said high court of errors and appeals, as the said court had full jurisdiction of said case and said judgment decided that there was no error in said judgment of the court below. Admits the issuance of the writ of fieri facias on said judgment, the levy on said lands by the deputy sheriff of said county.

Respondent further answering says, that said writ was issued at the instance of said James Stuart, the plaintiff in said judgment, and under his directions was ordered either by respondent or his partner, George B. Wilkinson. Denies that this respondent sued out said writ of venditioni exponas, but says that the same was sued out by said James Stuart, and this respondent or his partner were acting only as his attorneys. Admits the levy of said venditioni exponas, the sale of said
149 lands and the return of said sheriff by his deputy, John T. Heth. Respondent is advised and so says that said writ of venditioni exponas was not improvidently issued, and that the sale thereunder did pass the title to said purchaser. Respondent, from his information and belief, denies that said John T. Heth was not deputy sheriff of said county; that for some time before said writs were issued and for a considerable period afterwards he was acting as deputy sheriff, recognized by S. M. Dyer, the sheriff, as his deputy, and respondent during that period never before heard his official character called in question by any one.

Respondent further answering says, that he admits the sale of said lands and the deeds therefor by said Dyer, sheriff, to said Stuart and said Partee as set forth in said bill. This respondent says that he is advised that even if said writ does not show to whom said lands were

sold, it does not vitiate said sale. This respondent says that as to so much of said bill as charges this court as to what is the law on the writ of venditioni exponas, that it is not a statement or allegation of law and not of fact, and is advised that the same is improperly incorporated in said bill. Denies that there was a long, unreasonable, and un-
150 explainable delay between the issuance of said writ and venditioni exponas.

Respondent further answering says, that the reason of said delay was that a short time previous to the 24th of April, 1867, the said W. B. Partee applied for an extension of time to pay said judgment. This proposition was submitted to M'r Stuart or his agent by Wilkinson & Bowman, who agreed to extend the same until the 1st of January, 1868, provided his legal rights were in no manner jeopardized. Under the then existing laws, delays could be obtained with great facility by reason of the right to a writ of error & supercedeas by giving bonds only for cost & by injunctions without bond, and moreover there was at that time some doubt as to the legal liability of M'r's Partee on said note, but her liability has been since fixed by the judgment of the supreme court of this State in Silliman vs. Partee, 44 Miss. Reports, being the judgment of the court on the original indebtedness of said Silliman alleged in Exhibit D to have been novated. In view further of the probable delays then in decisions of the supreme court, it was thought by said Stuart and his attorneys advisable to give said Partees time to pay said judgment until the 1st of January, 1868. And so it
151 was agreed that said writ of fieri facias should not be enforced or executed until the first of January, 1868, conditioned that if the rights of said Stuart should be imperiled by any subsequent judgment creditor, then that said agreement should be null. In consequence of this extension said W. B. & Sarah D. Partee, as a security against other proceedings, gave, at the instance of the attorneys of said Stuart, said release of errors in said bill mentioned. The said Partee did not keep his promise by paying said judgment, but failed to do so, and thereupon the sheriff was ordered to proceed to execute said writ of fieri facias, and was proceeding to do so when, on the 18th of Feb'y, 1868, the said Partees sued out their writ of error to the high court of errors and appeals, and said judgment on the 9th of November, 1868, was affirmed. Denies that Ja's D. Partee was not present at said sale. Admits that James Stuart was not present, but was represented by Edward Drenning, his agent, and this respondent as one of the firm of Wilkinson & Bowman. Denies that no part of the purchase-money was paid, but, on the contrary, says that $550.00 was paid by Ja's D. Partee to said sheriff, and by said sheriff paid to Wilkinson & Bowman after deducting $93.00 for costs. Admits that as attorney for said
152 Stuart, with the concurrence of Edward Drenning, the agent of said Stuart, directed said sale. Denies and denounces as wholly untrue and false, that said sale was made upon an agreement with this respondent and W. B. & S. D. Partee, or either of them, as falsely charged in said bill. Denies as utterly and wholly untrue that the said Partees agreed or ever did pay the fees owing by said Stuart to respondent or his law firm. Denies that said Partee afterwards paid any amount on said judgment, or paid any fees or other sums of money to respondent. Denies that there was any agreement between said parties, or either of them, as to said sale. Denies that said sale was made to secure the possession of said property in the family of said Partee, or under any agreement to that effect, but bona fide to collect Stuart's judgment. Respondent says that this charge is a sheer fabri-

cation, unfounded in fact or truth, and is but the invention of said complainants or the draftsman of said bill. This respondent says that if said W. B. & Sarah D. Partee had the personalty charged in said bill liable to execution, this respondent denies any knowledge thereof. Respondent says at the time that said writ was in his possession that the sheriff or his deputy informed respondent that said personalty
153 was claimed by James D. Partee. Respondent had been informed that said lands were cultivated by said James D. Partee, and that he claimed said personalty as his own property, and therefore respondent denies as utterly false that said personalty was by order and direction of respondent not sold. Denies as wholly false and untrue that this respondent was the attorney of Ja's Stuart & W. B., S. D., & J. D. Partee in the matter of said sale, and as to the other matters as charged in said bill, and he denounces this charge as malicious and unfounded in fact or truth. This respondent says that in said sale he acted alone as the attorney of said Stuart; that he looked alone to his interest; that he procured the judgment creditor second in seniority to Stuart to attend said sale that Stuart's money might be realized; that J. C. Prewitt was the attorney of said Partees in said writ of error and in all subsequent proceedings in regard to said judgment and sale. Respondent says that in some other cases wholly disconnected with this of Stuart and not in conflict with it, his late firm did act as the attorney of said Partee.

This respondent, further answering, says that if said complainants relied upon him to protect their interest, their conduct and actions
154 were, to say the least, very strange; they did not advise him that they had taken said new notes provided in said trust-deed, but on the contrary many of them placed the old notes in the hands of other attorneys at the place of respondent's residence for suit and did sue; said complainants never called upon respondent to act, or in any manner, except as before stated, communicated with him about the said trust, and, therefore, from all the facts, respondent denies that they relied upon him as charged in said bill. Admits, as before stated, that respondent did think at the time said deed was executed, said security was good; admits that he did not give notice directly to said complainants because he did not feel it incumbent on him to do so. Respondent further says that at the time said trust-deed was executed that he was willing to accept said trust and would have done so and carried it out in good faith, but the action and conduct of said complainants and the other creditors induced him to believe that they had abandoned it. Respondent further says that if said deed had been accepted and acted upon by said creditors, and any conflict arose between the interest of said Stuart and said creditors, he would have promptly resigned the said trust.

155 Respondent denies and denounces as maliciously false and unfounded the charge that his conduct in the premises was a fraud upon complainant's rights, or was intended to hinder, delay, and defraud creditors. This respondent says that said complainants, the Citizens' and Canal Bank, had, at the time of said sale in Yazoo City, able, faithful, and competent attorneys to whom their rights had been intrusted and who had full knowledge of said sale.

Respondent denies that the claim of said Stuart was included in said trust-deed, but on the contrary says that he expressly refused to accept said security.

Respondent denies that lands at the time of said sale would bring nothing at forced sales, but says that by reason of the disastrous seasons to crops, and the low price of money, that lands were low. Denies that

said sale was to hinder and delay creditors, but was bona fide, that Stuart might get his money.

This respondent, further answering, says that about the time mentioned, to wit, on the 8th of March, 1869, that he, or the firm of Wilkinson & Bowman, did receive a letter, not from complainants directly, but from Mess'rs Hyams & Jonas, of New Orleans, purporting to act as the attorneys of some Partee's creditors, and the said complain-
156 ants, or a part of them as now remembered, in regard to said trust deed. Respondent denies that in the reply he claimed said deed to be void on a mere technical pretense, but on the ground that he never received notice of the acceptance of said trust deed and that the parties had sued on their original indebtedness. Respondent denies that at the time of said sale that he knew or had any notice of the acceptance of said complainants of said trust deed, or that they had given said new notes. Denies that said complainants had given notice either by words, letter, or their conduct, that they were confiding in him as a trustee. Denies that said Partee had anything to do with the sale of said property as far as he knows or believes. Denies that said property was worth forty thousand dollars on the day of said sale.

Respondent says that he did consider said property conveyed in said trust-deed at the time made as ample security for said intended novated notes, because the personal property and the probable accruing crops, together with the lands, were then, as he deemed, sufficient, with the time said notes had to run; but for the disastrous seasons of 1866 & 1867, the said Partee could have paid off a portion thereof with
157 the proceeds of the crops. Denies as maliciously false and untrue that said sale was made by previous agreement of parties, and that said sum of five thousand seven hundred and fifty dollars should be bid as charged in said bill, and says that this charge is the unfounded invention of the imagination of complainants or the draftsman of said bill. Denies again that said sale was to hinder, delay, or defraud creditors. Denies that no money was not paid on the day of sale.

Respondent says that on said lands bid in by James D. Partee, there was a decree, principal and interest of over eight thousand dollars in favor of Edward Dreuning, administrator of Christopher Todd, deceased, which had or was entitled to priority of satisfaction over the judgment of Stuart, and, moreover, it was understood at said sale that W. B. Partee claimed his homestead in said lands amounting to 240 acres bought by James D. Partee.

Respondent further states that there was a large number of persons present at said sale, including Richard Barkley, the second judgment creditor of W. B. & Sarah D. Partee, who informed respondent that he came prepared to bid on said lands to their then market value, to save his judgment. There was also present N. G. Nye, one of the at-
158 torneys of W'm Silliman and C. C. Peck. In said Exhibit D to complainant's bill, it is set up that Silliman, Peck, & Barkley had accepted the said trust-deed, yet all of them had sued on said original indebtedness intended to be novated by said trust-deed.

Respondent says, that after said sale, the said W. B. & Sarah D. Partee refused to give up the lands bought by said Stuart, and, by advice of respondent, an action of ejectment was brought therefor by advice of this respondent, and to said suit there was, or notice was given that there would be, a plea setting up homestead in said lands, when said Partee & wife were enjoined therefrom, and by a decree of the

chancery court said injunction was perpetuated, and said lands decreed to be the property of said Stuart without right of homestead.

Respondent says that said sale to Stuart was made on a regular sale day, after due notice; that several other sales were made by said sheriff on the same day. Admits that said Partee is connected by affinity with respondent, but that he and said Partee are not on intimate terms.

Respondent says that said Partee withholds as aforesaid 240 acres of said land from Stuart against his consent, claiming the same as
159 a homestead; that James D. Partee, as he is informed, claims to be in possession of the place bought by him; James Stuart is in possession of all lands bought by him except said 240 acres. Respondent, of his own knowledge, knows nothing of said deeds to F. Barksdale, trustee, from Jas. D. Partee; knows that said Barksdale sold said lands to Nelson, Lamphier & Co., and was informed by S. O. Nelson, of said firm, that the sale was made to satisfy an indebtedness due by J. D. Partee to his firm.

To interrogatory 1st. There was present at said sale, Richard Barkley, N. G. Nye, the attorney of Silliman & Peck, Jas. D. Partee, W. B. Partee, Edward Drenning, the agent of Jas. Stuart, myself, and a large number of others, the only one of whom I can recollect was W. W. Wilde, and recollect him because of being examined as a witness in the chancery suit of Jas. Stuart vs. W. *D.* Partee, to recover possession of said lands. The lands bought by Jas. D. Partee were bid in by him in person; those bought by Stuart, either by M'r Drenning or myself. The lands were not adjudicated to Stuart, but sold to him for $5,200.00, because he was the highest bidder; those to Jas. D. Partee, because he was the highest bidder. The only preliminary arrangements
160 touching said sale were the notice of the sheriff as far as I know. No negotiations were made between myself or my firm, as attorneys for Stuart & Partee, of any kind touching said sale. I cannot state the relative value of said lands bought by Stuart and Partee respectively with accuracy. Barkley, the second judgment creditor, informed me that he had come prepared to bid on said lands, so as to realize his judgment, but was advised by N. G. Nye that $550 with the homestead of 240 acres *carved* and the priority of said decree of said Drenning, administrator, was the full cash market value of said lands. Barkley & Nye run up the other tract on Stuart to $5,200.00. But for instructions of M'r Stuart, through M'r Drenning, that Stuart did not desire to incumber himself with debt in the purchase of said lands bought by James D. Partee, I should have bid more on them, as said lands were much more valuable than those bought by Stuart. There was $550.00 paid by Jas. D. Partee, as I recollect now, to the deputy sheriff, and by him to me, or possibly it may have been to me directly.

2d interrogatory has already been answered.

3d. I did not regard, for reasons before stated, myself as trustee.
161 I did not know, and was never informed by any one, that complainants would pay Stuart's judgment before selling the lands, as it would have been very readily accepted: M'r Stuart being anxious to realize his money, and would have been glad to receive it and transfer the judgment.

4th. A part of my fee was paid from the proceeds of the sale of said lands amounting to $457, a portion has since been paid by Stuart, and there is yet a part due, to be paid on the termination of the suit now pending between Stuart & Partee for possession of said lands.

5th. I did not retain copies of my letters to Stuart; very few were written, as our communication was with M'r Drenning, his agent. M'r

Stuart is now in Europe, and I cannot get access to the originals until his return.

6. Int. Already answered.

Having fully answered, respondent prays to be hence dismissed with his costs.

R. BOWMAN.

UNITED STATES OF AMERICA,
Southern District of Mississippi:

Before me, Geo. T. Swann, clerk of the circuit court of the United States in and for the district aforesaid, personally appeared Robert Bowman, who, on oath, says that the facts set forth in the fore-
162 going answer as of his own knowledge are true, and those stated upon the knowledge and information of others he believes to be true.

ROB'T BOWMAN.

Sworn to and subscribed before me April 30th, 1873.

GEO. T. SWANN, *Cl'k.*

(Endorsed:) Filed Ap'l 30th, 1873. Geo. T. Swann, cl'k.

Exhibit 1 to answer of Rob't Bowman.

STATE OF MISSISSIPPI,
Yazoo County:

Be it remembered, that heretofore, to wit, at the May term, 1868, of the Yazoo circuit court, begun and held at the court-house in Yazoo City, in and for the county aforesaid, on the 11th day of June, 1868, it being a regular term of said court, the following pleadings and proceedings were had and done before J. A. P. Campbell, judge of the fifth judicial district of said State:

Declaration.

STATE OF MISSISSIPPI,
Yazoo County:

Yazoo circuit court, May term, 1867.

THE CRESCENT CITY BANK OF NEW ORLEANS, State of Louisiana, plaintiff,
against
WILLIAM B. PARTEE & SARAH D. PARTEE, defendants.

163 Said plaintiff declares that said defendants are justly indebted to said plaintiff in the sum of four thousand dollars, as evidenced by the promissory note in writing, signed by said Sarah D. Partee, and authorized by said William B. Partee, dated New Orleans, February 4th, 1861, & *and* & payable on the 20th day of March, 1862, to the order of S. O. Nelson & Co., at their counting-house in the city of New Orleans, with eight per cent. interest after maturity until paid.

Said plaintiff declares that said promissory note was by said firm of S. O. Nelson & Co. (who are non-residents of this State & not here sued) endorsed and delivered to said plaintiff, & demand and notice & protest of same were by said firm waived.

Said plaintiff avers that the full amount of said note is now due & unpaid, & that said defendants fail and refused to pay the same, and therefore this suit is brought.

MILES & EPPERSON,
Att'ys for P'ff.

A.

Copy of note.

$4,000.00.] NEW ORLEANS, *February* 4, 1861.

On the 20th March, 1862, I promise to pay to the order of S. O. Nelson & Co., at their counting-house in the city of New Orleans, four thousand dollars, for value received, bearing interest at the rate of eight per cent. per annum after maturity until paid.

164 SARAH D. PARTEE.

Authorized by me.

W. B. PARTEE.

(Endorsement on note:) S. O. Nelson & Co.

We hereby waive protest, demand, and notice of protest.

S. O. NELSON & CO.,
Pp. J. S. LAMPHIER.

Demurrer.

W. B. PARTEE ET AL., DEF'TS,
ats.
CRESCENT BANK OF NEW ORLEANS, PL'FF.

And the said defendants, by their attornies, come and defend the wrong and injury, when, &c., and say that the said declaration and the matters and things therein contained in manner and form as the same set forth and stated are insufficient in law for said plaintiff to have or maintain his aforesaid action thereof against them, and they doth demur thereto, and for causes of demurrer, showeth:

1st. That said declaration does not contain any averment to charge these defendants with the amount of indebtedness alleged in said declaration, and does not show any cause of action against them, or either of them.

2d. That said declaration does not aver that said promissory
165 note mentioned was ever delivered to the assignor of plaintiff, or that these defendants, or either of them, ever undertook and promised to pay the same.

3d. That said declaration contains only an averment of the evidence of defendants' indebtedness, and not any averment to fix or show the liability of said defendants therefor.

4th. Said declaration simply avers an indebtedness by defendants of four thousand dollars, evidenced *evidenced* by a promissory note in writing, signed by Sarah D. Partee and authorized by said William B. Partee, without stating the right by which William B. Partee authorized said signature or for whose benefit, *or whose benefit* or in any manner show who the principle and responsible party was, nor does it show liability on the part of either of said defendants.

5th. Said declaration does not aver that said promissory note was

made or delivered by said defendants, or either of them, to S. O. Nelson & Co., but simply avers that it was signed by said defendant Sarah D. Partee, and authorized by defendant W. B. Partee.

6th. Said declaration does not aver any time or date at which said promissory note was signed or made.

7th. That said declaration is in many other respects informal,
166 uncertain, and insufficient. Wherefore, by reason of the insufficiency of said declaration, said defendants pray judgment, &c.

WILKINSON & BOWMAN,
Att's for Defendants.

And said defendants, by their attorneys, come and defend the wrong and injury, when, &c., and say that they do not undertake & promise in manner and form as said plaintiff hath thereof complained against them.

WILKINSON & BOWMAN.

(Endorsement on declaration:) Crescent City Bank vs. W. B. Partee, Sarah D. Partee. Dec. $5,991.98. June 11th, 1868. Yazoo circuit court, May term, 1867. Filed April 20, 1867. Geo. A. Gibbs, cl'k. Miles & Epperson.

Amended declaration.

STATE OF MISSISSIPPI,
Yazoo County:

Yazoo circuit court.

THE CRESCENT CITY BANK OF NEW ORLEANS, State of Louisiana, plaintiff,
against
WILLIAM B. PARTEE AND SARAH D. PARTEE, his wife, defendants.

167 Said plaintiff alleges that the said Sarah D. Partee, wife of the said W'm B. Partee, by authority of law and the authority of the said husband, at New Orleans, in the State of Louisiana, on the 4th day of February, 1861, executed and delivered to S. O. Nelson & Co., merchants and partners under such firm-name, then doing business in said city of New Orleans, her certain promissory note of the date aforesaid, whereby she undertook and promised to pay to the order of said S. O. Nelson & Co., on the 20th day of March, 1862, at their counting-house in said city of New Orleans, the sum of four thousand dollars for value received, bearing interest at the rate of 8 per cent. per annum after maturity until paid, which said note is herewith filed as part hereof, marked "A." Said plaintiff declares that said note was executed and delivered by the said Sarah D. Partee, with the sanction and by the authority of her said husband and of the law, she being, at the time of its execution and delivery as aforesaid, the owner in her own right of plantations, lands, tenements, slaves, plantation implements, and stock, situated and lying and being in said State of Mississippi, for money & means for the supply of her plantations situated as aforesaid, & for the maintenance, clothing, care, and support of her slaves, property,
168 and interest & business, and for the purchase of property and effects in her own name and for the use and benefit of her own separate estate.

Said plaintiff alleges that said firm of S. O. Nelson & Co. endorsed

and delivered said note to said plaintiff, and that said plaintiff is the legal owner and holder of the same, and that it is now and has long since been due, but that said defendants, although often requested to pay the same, have wholly failed and refused to do so. Said plaintiff alledges that said defendants, on the 20th day of March, 1862, at, to wit, the county & State aforesaid, were indebted to said plaintiff in the further sum of $4,000.00, for money loaned and advanced, and in the like further sum for so much money had and received; and also in the like further sum of so much laid out and expended; and also in the like further sum for goods, wares, and merchandise sold and delivered; and also in the like further sum upon an open account stated, & which several said sums said defendants promised to pay whensoever thereunto afterwards requested so to do. Yet to pay the same or any part thereof, although often requested to do so, they have wholly failed and refused, and still fail and refuse, to the damage of said plaintiff eight thousand dol-
169 lars, and therefore said plaintiff brings this suit.

MILES & EPPERSON,
For Pl'ff.

Summons.

The State of Mississippi to the sheriff of Yazoo Co., greeting:

You are hereby commanded to summon William B. Partee and Sarah D. Partee, if to be found in your county, so that they appear before the circuit court, to be held at the court-house in Yazoo Co'ty, in and for the county aforesaid, on the 4th Monday of May next, to answer a complaint filed in our said court by the Crescent City Bank of New Orleans, and have then and there this writ.

Issued the 20th day of April, 1867.

GEO. A. GIBBS, *Clerk.*

Endorsement.

This action is founded on a promissory note drawn by defendant, Sarah D. Partee, for $4,000.00, dated Feb'y 4th, 1861, payable M'c'h 20th, 1862. The sum actually demanded is the amount of said note with interest thereon until paid.

Judgment will be required at the return of this writ.

Complaint filed when writ issued.

MILES & E.,
Attorney.

[SEAL.] GEO. A. GIBBS, *Clerk.*

170 Executed May 22d, 1867, by delivering a true copy of the within writ to each of the within-named defendants.

S. M. DYER, *Sh'ff,*
By CHA'S C. DYER, *D. S.*

Circuit court Yazoo County. May term, 1868.

JUNE 11, 1868.

On said the following judgment was rendered:

THE CRESCENT CITY BANK OF NEW ORLEANS, State of Louisiana, *vs.* WILLIAM B. PARTEE AND SARAH D. PARTEE, his wife. } I. 2207.

This day came the parties, by attorney, and issue being joined, it is ordered by the court that a jury come.

Whereupon, came James Pepper and eleven others, who being duly elected, tried, and sworn to try the issue joined, upon their oath do say, we the jury find for the plaintiff, and assess their damage to the sum of $5,991 $\frac{98}{100}$ (five thousand nine hundred and ninety-one and $\frac{98}{100}$ dollars).

Whereupon it is considered by the court that plaintiffs have and recover of defendants William B. Partee and Sarah D. Partee, his wife, the sum so assessed by the jury, and also their costs in this behalf expended.

J. A. P. CAMPBELL,
Judge.

STATE OF MISSISSIPPI,
Cazoo County:

I, W. H. Foote, clerk of the circuit court in & for said county,
171 do hereby certify that the above and foregoing pages are a true and correct transcript of the record in the above-stated case (& also the judgment) as the same appears of record in my office.

Given under my hand and seal of office this 25th day of April, 1873.

[SEAL.] W. H. FOOTE, *Clk*,
Per R. D. SMITH, *D. C.*

(Endorsed:) Filed 30 Ap'l, 1873. Geo. T. Swann, cl'k.

Exhibit 2 to answer of R. Bowman.

STATE OF MISSISSIPPI,
Yazoo County:

Be it remembered that heretofore, to wit, at the May term, 1868, of the Yazoo circuit court, begun and held at the court-house in Yazoo City, in and for the county and State aforesaid, on the 11th day of June, 1868, it being a regular term of said court, the following pleadings and proceedings were had and done before J. A. P. Campbell, judge of the fifth judicial district of said State:

Declaration.

STATE OF MISSISSIPPI,
Yazoo County:

Yazoo circuit court. May term, 1867.

THE NEW ORLEANS CANAL & BANKING COMPANY of New Orleans, Louisiana, plaintiff,
against
172 WILLIAM B. PARTEE AND SARAH D. PARTEE, defendants.

Said plaintiff declares that said defendants are justly indebted to said plaintiffs in the sum of five thousand dollars, evidenced by the promissory note of said Sarah D. Partee, authorized by said William B. Partee, her husband, for said sum of five thousand dollars, dated January 5th, 1861, and due and payable on the 27th day of January, 1862, to the order of Rotchford, Brown & Co., at their counting-house in said city of New Orleans, with eight per cent. interest thereon after maturity until paid.

Said plaintiff declares that said above-described promissory note was by said firm of Rotchford, Brown & Co. (who are non-residents and not here sued) endorsed and delivered to said plaintiff, and demand of payment and protest and notice thereof waived.

Said plaintiff alledges that the full amount of said promissory note is due and unpaid, and that said defendants refused to pay the same, and therefore said plaintiff brings this suit.

MILES & EPPERSON,
Pl'ff's Atto'y.

Filed April 20, 1867.

GEO. A. GIBBS, *Clk.*

A copy of note.

$5,000.] NEW ORLEANS, *January* 5, 1861.

On the twenty-seventh January, 1862, after date, I promise to
173 pay to the order of Rotchford, Brown & Co., at their counting-house in this city, five thousand doll's, value received, with eight p. cent. per annum, interest after maturity, until paid.

SARAH D. PARTEE.

No. 3123. Authorized by me.

W. B. PARTEE.

(On the margin:) Rotchford, Brown & Co.

(Endorsement on note:) Rotchford, Brown & Co.

We waive demand & protest of this note and service of notice on us as endorsers, and hold ourselves bound for the payment thereof in the same manner as if it had been regularly protested & notice served on us.

New Orleans, 18th November, '61.

ROTCHFORD, BROWN & CO.
P. pro. A. J. AIKIN.

Summons.

The State of Mississippi to the sheriff of Yazoo Co., greeting:

You are hereby commanded to summon William B. Partee & Sarah D. Partee, if to be found in your county, so that they appear before the circuit court to be held at the court-house in Yazoo City, in and for the county aforesaid, on the 4th Monday of May next, to answer a complaint filed in our said court, by the New Orleans & Banking Company, and have then and there this writ.

174 Given under my hand and seal of office of said court this 20 day of April, 1867.

[SEAL.] GEO. A. GIBBS, *Clerk.*

Endorsement.

This action is founded on a promissory note for $5,000, dated January 5th, 1861, payable 27th , 1862, with interest at 8 per cent. from maturity. The sum actually demanded is the amount of said note with interest thereon until paid. Judgment will be required at the return of this writ.

Complaint filed when writ issued.

M. & E., *Attorney.*

GEO. A. GIBBS, *Clerk.*

Executed May 22, 1867, by delivering a true copy of the within writ to each of the within-named defendants.

S. M. DYER, *Sh'ff,*
By CHAS. C. DYER, *D. S.*

Demurrer.

W. B. PARTEE & WIFE, DEF'TS,
ats.
NEW ORLEANS CANAL & BANKING COMPANY, of New Orleans, Louisiana, pl'ffs.

And the said defendants by their attorneys say that the matters and things in manner and form as set forth in said plaintiff's declaration, are insufficient in law to have or maintain the aforesaid action thereof against these defendants, and the said defendants show to the
175 court the following causes of demurrer, that is to say:

First. Said declaration does not show any legal liability on the part of said defendants, or either of them, to pay said sum of money mentioned on said plaintiff's declaration.

2. Said declaration does not aver or sufficiently show that said defendants, or either of them, ever undertook or promised to pay said sum of money mentioned in said plaintiff's declaration.

3d. Said plaintiff does not aver that said promissory note, mentioned in his said declaration, was ever by said defendants, or either of them, delivered to the assignor of plaintiff.

4th. No judgment could be rendered on said declaration; plaintiff does not show that he has been damaged to any amount whatever.

5th. Said declaration avers no legal liability against the separate estate of Sarah D. Partee, one of the said defendants.

Said declaration is, in other respects, informal, uncertain, and insufficient, &c.

Wherefore said defendants pray judgment, &c.

WILKINSON & BOWMAN,
For Def'ts.

Amended declaration.

STATE OF MISSISSIPPI,
Yazoo County:

Yazoo circuit court.

THE NEW ORLEANS CANAL & BANKING
176 Company, of New Orleans, Louisiana, plaintiff,
against
WILLIAM B. PARTEE & SARAH D. PARTEE, defend'ts.

Said plaintiff alledges that the said Sarah D. Partee, wife of the said W'm B. Partee, by the authority of law and with the consent of her said husband, at New Orleans, in the State of Louisiana, on the 5th day of January, 1861, executed and delivered to Rotchford, Brown & Co., merchants and partners under such firm-name, then doing business in said city of New Orleans, her certain promissory note of the date aforesaid, whereby she undertook and promised to pay to the order of Rotchford, Brown & Co., on the 27th day of January, 1862, at their counting-house in the said city of New Orleans, the sum of five thousand dollars, for value received, bearing interest at the rate of 8 per cent. per annum after maturity until paid, which said note is herewith filed as part hereof, marked "A."

Said plaintiff alleges that said note was executed and delivered by said Sarah D. Partee with the sanction and by the authority of her said husband and of the law, she being at the time of its execution and delivery the owner in her own right of plantations, lands, tenements, slaves, plantation implements, and stock situated, lying, and be-
177 ing in said State of Mississippi, for money & means for the supply of her plantations, situated as aforesaid, and for the maintenance, care, and support of her slaves, property, interest, and business, and for the purchase of property and effects in her own name and for the use and benefit of her own separate estate.

Said plaintiff alleges that said firm of Rotchford, Brown & Co. endorsed and delivered said note to them, said plaintiff, and that the said plaintiff is the legal owner & holder of the same, and that it is now and has long since been due, but that said defendant', although often requested to pay the same, have hitherto wholly failed to do so.

Said plaintiff alleges that said defendants, on the 27th day of January, 1862, at, to wit, the county and State aforesaid, was indebted to said plaintiff in the further sum of $5,000.00 for money loaned and advanced, and in the like further sum for so much money laid out and expended, and also in the like further sum upon an open account stated; and which said several sums said defendants promised to pay whenever thereunto afterwards requested; yet to pay the same, or any part thereof, although often requested so to do, they have wholly failed and refused, and still fail and refuse, to the damage of said plaintiff
178 ten thousand dollars, & therefore this suit is brought.

MILES & EPPERSON,
For Plaintiff.

Circuit court Yazoo County. May term, 1868—June 11th, 1868.

On said day the following judgment was rendered:

NEW ORLEANS CANAL AND BANKING COMPANY *vs.* WILLIAM B. PARTEE & SARAH D. PARTEE. } I. 206.

This day came the parties by attorney, and issue being joined, it is ordered by the court that a jury come.

Whereupon came James Pepper and eleven others, who being duly elected, tried, and sworn to try the issue joined, upon their oath do say: We, the jury, find for the plaintiff, and assess their damages to the sum of $7,548 $\frac{88}{100}$ (seven thousand five hundred and forty-eight and $\frac{88}{100}$ dollars).

Whereupon it is considered by the court that plaintiffs recover of William B. Partee and Sarah D. Partee, his wife, the sum so assessed by the jury, and also their costs in this behalf expended,

J. A. P. CAMPBELL, *Judge.*

STATE OF MISSISSIPPI,
Yazoo County:

I, W. H. Foote, clerk of the circuit court in and for said county,
179 do hereby certify that the above and foregoing pages are a true and correct transcript of the record in the above-stated cause (& also the judgment), as the same appears of record in my office.

Given under my hand and official seal, this 23d day of April, 1873.

[SEAL.]

W. H. FOOTE, *Clk,*
Per R. D. SMITH, *D. C.*

(Endorsed:) Filed 30th Ap'l, 1873. Geo. T. Swann, cl'k.

And afterwards, to wit, on the 16th day of May, A. D. 1873, the following replication to answer of R. Bowman was filed in the clerk's office of said court, in the words & figures following, to wit:

Replication to answer of R. Bowman.

In the circuit court of the United States for the southern district of Mississisipp. In equity.

CANAL BANK OF LA. & OTHERS
vs.
WILLIAM B. PARTEE ET ALS. } 185.

And the said complainants, for replication to the answer of Robert Bowman herein filed, say, that the several matters and things stated in said answer are vague, uncertain, and , and present no sufficient answer in said cause, and that the several matters and things set
180 forth in complainants' said bill are true in manner and form as therein and thereby set forth and alleged, as complainants stand ready to aver, maintain and prove as to this honorable court may seem meet; wherefore, &c.

NUGENT & YERGER,
Sol. for Compl't.

(Endorsed:) Filed May 16, 1873. G. T. Swann, cl'k.

And afterwards, to wit, on the 8th day of July, A. D. 1873, an alias subpœna issued from the clerk's office of said court, which with the return of the marshal thereon is in words & figures following, to wit:

Alias subpœna.

UNITED STATES OF AMERICA,
Southern District of Mississippi, ss:

The President of the United States to the marshal of the southern district of Mississippi, greeting:

You are hereby commanded, as before, without delay to summon William B. Partee, Sarah D. Partee, James D. Partee, Thomas A. Nelson, James Stuart, and Fountain Barksdale, trustee for Nelson, Lamphier & Co., citizens of the State of Mississippi, to appear before the circuit court of the United States for the southern district of Mississippi, at the city of Jackson, at rules to be holden in the clerk's office of said
181 court, on the first Monday in August next, to answer a bill in equity exhibited against them et als., by the president, directors, and company of the Canal Bank of Louisiana, the Crescent City Bank, the Union Bank, and the Louisiana State Bank, all of which are bodies corporate, domiciled and doing business in the city of New Orleans, Louisiana, and J. Marsh Denman and A. Bidault, who are citizens of the State of Louisiana, and who sue in behalf of themselves and all others claiming under the trust deed in said bill mentioned, and unless shall enter their appearance therein in the clerk's office aforesaid, on or before the time specified above, the said bill will be taken for confessed, and have then there this writ and how you have executed the same.

Witness the honorable Nathan Clifford, Chief Justice of the Supreme

Court of the United States, and the seal of our said circuit court, this 8th day of July, A. D. 1873, and in the 98th year of the Independence of the United States of America.

[SEAL.] GEO. T. SWANN, *Clerk.*

Received July 14th, 1873.

R. J. ALCORN,
U. S. Marshal,
Per WM J. BROWN, J'R,
Dep. U. S. M.

UNITED STATES MARSHAL'S OFFICE,
SOUTHERN DISTRICT OF MISSISSIPPI,
182 *Jackson, Miss., July 14th,* 1873.

I hereby nominate and appoint J. W. Blessing my special deputy to execute and return the within process, according to law.

R. J. ALCORN,
U. S. Marshal.

Executed on Fountain Barksdale in person, and delivered him a true copy of same this 21st day of July, A. D. 1873.

R. J. ALCORN, *U. S. M.,*
By BLESSING, *Dep'y.*

Executed in person on James D. Partee, this 23d day of July, A. D. 1873. The other defendants not found in this district.

R. J. ALCORN,
U. S. Marshal,
By J. W. BLESSING,
S. D. U. S. M.

And afterwards, to wit, on the 30th day of July, A. D. 1873, the answer of Fountain Barksdale was filed in the clerk's office of said court, which is in the words & figures following, to wit:

Answer of F. Barksdale.

To the honorable the circuit judge of the United States for the southern district of Mississippi, in equity sitting:

The answer of Fountain Barksdale, of Yazoo County, Mississippi, to a bill of complaint exhibited against W. B. Partee, this respondent, and others by the Canal Bank of Louisiana and others in this honorable court.

This respondent, saving and reserving to himself all manner of
183 exceptions to the manifold errors and misstatements in said bill of complaint contained, for answer thereto or so much thereof as he is advised is material for him to answer, answering, says: That he is informed and believes that his codefendant, Thomas A. Nelson, is not a citizen or resident of Yazoo County, Mississippi, but resides at Memphis, in the State of Tennessee, and has been informed and believes that said defendants Ja's Stuart and W'm B. and Sarah D. Partee are now and were at the time of filing said bill of complaints non-residents of the State of Mississippi.

Respondent, further answering, says that of his own knowledge he knows nothing of the indebtedness due by said W'm B. Partee and Sarah D. Partee to said complainants created before the late war, nor

of said trust-deed executed by them to R. Bowman as trustee, nor of the acceptance or non-acceptance of its terms by said parties, nor of the rights of said complainants thereunder, and if in any manner to be effected by the allegations of said bill, in regard thereto, demands strict proof.

Respondent, further answering, says that he knows of his own knowledge nothing of the judgment of James Stuart against W'm B. and Sarah D. Partee, nor of any of the proceedings thereunder or connected therewith, nor of the sale under said judgment and of the respec-
184 tive purchases of said lands by said James D. Partee and Ja's Stuart, or of any of the matters connected therewith as alleged in said bill, and if in any manner to be effected by these allegations, demands strict proof.

Respondent, further answering, says that he only knows that, for a period of several years after the date of sale to Ja's Stuart and up to the sale thereof by this respondent, that he was the reputed owner of said lands.

Respondent, further answering, says that he admits the executions of the several trust-deeds in said bill mentioned by James D. Partee to this respondent for the benefit of Nelson, Lamphier & Co. at the dates & for the considerations respectively mentioned in said trust-deeds as alleged in said bill.

Respondent, further answering, says that, pursuant to the terms and provisions of said trust-deeds in said bill mentioned, and at the request of Mr. S. O. Nelson, of the firm of Nelson, Lamphier & Co., the cestui que trusts, this respondent, after giving due and legal notice of the time and place of sale, as prescribed in said deed, did, on the 10th of June, A. D. 1872, sell at public auction to the highest bidder for cash the said lands in said deed mentioned in the manner provided by law, and at said sale said Thomas A. Nelson, then and now a citizen and resident of Memphis, Tennessee, became the purchaser of said lands for
185 the sum of three thousand one hundred dollars, and this respondent did, in pursuance of said purchase by said Thomas Nelson, execute to him a deed for said lands as alleged in said bill.

Respondent further answering says, that he denies any knowledge of any other consideration for said trust deeds than what are expressed therein. Denies all knowledge or information that said James D. Partee, after or before said sale by this respondent, should have the right to redeem or purchase said lands from Thomas A. Nelson. Denies all knowledge of any agreement between Jas. D. Partee and Nelson, Lamphier & Co., that said sale was not to operate as a complete sale and conveyance.

Respondent further answering says, that said sale was fairly conducted by him, made after due notice, within the hours prescribed by law, and was struck off to said Nelson because he was the highest and best bidder. Respondent believes it to be true that said James D. Partee is on said lands, but in what capacity—whether as manager of said Nelson or not, he does not know. Respondent is informed that said William B. Partee, and Sarah D. Partee have been since said sale, living in Missouri. This respondent, except as herein in this his answer, knows nothing of the matters alleged in said bill.

186 Having fully answered, respondent prays to be hence dismissed with his costs, &c.

J. A. P. CAMPBELL,
R. BOWMAN,
For Def't.

UNITED STATES OF AMERICA,
Southern District of Mississippi :

Before me, W. H. Mangum, a U. S. commissioner, in and for the district aforesaid, personally appeared Fountain Barksdale of Yazoo County in said district, who on oath says that the facts set forth in the foregoing answer as of his own knowledge are true, and those stated upon the knowledge and information of others, he believes to be true.

F. BARKSDALE.

Sworn to and subscribed before me at Yazoo City, this 29th day of July, 1873.

[SEAL.]

W. H. MANGUM.
Commissioner in the U. S. Court,
South'n Dist. of Miss.

(Endorsed :) Filed July 30th, 1873. Geo. T. Swann, cl'k.

And afterwards, to wit, on the 1st day of August, A. D. 1873, the answer of J. D. Partee was filed in the clerk's office of said court, which, with the exhibit thereto, is in the words & figures following, to wit :

Answer of J. D. Partee.

To the honorable the judge of the circuit court of the United States, for the southern district of Mississippi, in equity sitting: The
187 answer of James D. Partee to a bill of complaint exhibited against W. B. Partee, this respondent and others, in this honorable court by the president, directors, and company of the Canal Bank of Louisana, and others.

This respondent, saving and reserving to himself all manner of exceptions to the manifold errors and misstatements in said bill of complaint contained, for answer thereto, or so much thereof as he is advised is material for him to answer, answering, says: That he admits that this respondent and his codefendants, F. Barksdale and R. Bowman, are residents and citizens of Yazoo County, Mississippi. Respondent denies that the other of said defendants are residents or citizens of said county and State.

Respondent says that Thomas A. Nelson was at the time and before the filing of said bill and is now a resident and citizen of the city of Memphis in the State of Tennessee. That William B. and Sarah D. Partee are now and were at the time of filing said bill, and before residents and citizens of S't Louis in the State of Missouri, and James Stuart was formerly a resident and citizen of New Orleans, in the State of Louisiana, but respondent is informed, and believes, and so says, that now and at the time of filing said bill, & before said Jas.
188 Stuart was a resident of Ireland in the kingdom of Great Britain.

Respondent further answering, says that he knows nothing of the indebtedness of said William B. and Sarah D. Partee, upon said alleged contracts, on the 19th of November, A. D. 1866, as charged in said bill, except as appears by said exhibits to said bill—knows nothing of the execution of said trust-deed by William B. and Sarah D. Partee to said Robert Bowman, as trustee, except as appears by said bill and said trust-deed as an exhibit thereto. Respondent of his own knowledge knows nothing as to the person who wrote said deed, nor as to who performed the labor of settlement, except that he has been informed and believes that it was written by said Robert Bowman, and that the labor of attempting to effect a settlement thereunder was performed by William B. Partee. Respondent knows nothing of

said letter of Wilkinson & Bowman, marked "Exhibit B" to said bill, nor to said letter of Mrs. Sarah D. Partee, marked "Exhibit C," nor of said receipt marked "Exhibit D," except as appears by said exhibits.

Respondent further answering, says that of his own knowledge he knows nothing of said suit of Ja's Stuart vs. W. B. and Sarah D. Partee, but has been informed and believes that there was such a suit and judgment thereon.

189 Respondent admits that a writ of error was prosecuted by said William B. Partee & wife from said judgment to the high court of errors and appeals. Respondent is informed and believes that said writ was not dismissed, but said judgment was affirmed by said court. Respondent, from his information and belief, denies that in the prosecution of said writ and the affirmance of said judgment was to hinder, delay, or defraud complainants or to defeat said trust-deed.

Respondent further answering, says that he knows nothing of the return on said writ of summons in said suit of Stuart vs. W. B. and Sarah D. Partee, except as appears by exhibits to the bill, but is advised and believes and so says that said judgment having been affirmed by the high court of errors and appeals, cured any defect, if any existed, in the return on said writ. Respondent is informed and believes, and so says that said release of errors made by said W. B. and Sarah D. Partee, was pleaded by said Stuart, or his attorneys, in said high court, and that the same was affirmed. Respondent admits the issuance of said writ of fieri facias under said judgment and levy on said lands, and said writ of venditioni exponas, but by whom sued out respondent does not know. Respondent is informed and believes that be-

190 fore said writ of venditioni exponas was sued out, and said writ of fieri facias was returned, as alledged in said bill, into court, to wit, on the 18th of February, 1868, the said W. B. and Sarah D. Partee prosecuted a writ of error from said judgment to the high court of errors & appeals, which was there affirmed, and after its affirmance that said writ of venditioni exponas was issued, under which said lands were sold. Respondent is advised and believes that said sale was valid under said writ of venditioni exponas. Denies that said sale passed to the purchasers no valid to said lands.

Respondent further answering, says that at the time said writ of fieri facias was levied, and at the time of sale that said Jno. T. Heth was acting as deputy sheriff, was recognized as such by S. M. Dyer, the sheriff of Yazoo County, and if in any manner to be effected by the allegation of complainant's bill, that he was not deputy sheriff, this respondent demands strict proof.

Respondent further answering, says that the sale of said lands to this respondent and said Stuart was made by said sheriff of Yazoo County, Mississippi, on Monday, the 4th of January, 1869, and was not on the 5th of said month, and if the return on said writ of vendi is as

191 alleged, that said lands were sold on the 5th of January, and if the deed of said Stuart recites that it was on the 5th of said month, this respondent says as to that said return and recital is, as he believes, an error.

This respondent further answering, says that said sale was on the first Monday of January, 1869.

Respondent further answering, says that immediately after sale under said writ of vendi under said judgment of Stuart, that he applied for a deed to said lands—the said sheriff, S. M. Dyer, or his deputy, Jno. T. Heth, replied that they were then busy and unable to make out said

deed, but would do so in a short time and mail it to this respondent, which was done shortly afterwards. A certified copy of said deed is herewith filed as Exhibit No. 1. This respondent is advised and believes that the sale of said lands was valid. Denies that said sales were null and void.

This respondent, from information and belief, denies that said writs of fi. fa. & vendi. were issued without authority of law, or that the judgment under which they issued were void, or that said sale was not advertised according to law, or that the proceedings under which said sales were fraudulent or intended to hinder, delay, and defraud creditors of
192 said W. B. & Sarah D. Partee, or that said sale was not made on a regular sale day, or that said sheriff failed to give legal notice of the time of said sale as required by law, & if to be effected by any of these allegations, demands strict proof.

This respondent denies that he was not present at said sale, but says that he attended said sale to buy a portion of said lands. This respondent says that he knows nothing of said Bowman conducting or managing said sale, except that he was present as the att'y of Stewart, but says that as far as he knows said sale was conducted by said Dyer, the sheriff of said county, and was fairly and legally carried on. Denies that said sale was consummated upon an agreement between this respondent, W. B. Partee, and R. Bowman, as charged in said bill. Denies that there was any agreement that a part of said lands should be bid in by said Stewart and the residue by this respondent as charged in said bill. Denies that he either separately or with William B. Partee ever agreed to pay the fees owing by said Stuart to Wilkinson & Bowman or said Bouman or any part thereof. Denies that he ever paid said Bouman the fees of said Stuart or any part or portion thereof, at any time, or that he ever agreed to do so, separately or with any one else. Denies
193 that there ever was any arrangement, agreement, or understanding between this respondent, W. B. Partee and said R. Bowman, to keep said lands in possession of W. B. & Sarah D. Partee or the family. Admits that previous to said sale said W. B. & Sarah D. Partee were in possession of said lands with this respondent who cultivated the same. Denies that, at the time of the issuance of said execution on said judgment, or at the time that it was levied, or at any time after the rendition of said judgment, that W. B. and Sarah D. Partee had in their possession as their own property, any personalty subject to seizure and sale in said county or elsewhere. Denies that said W. B. and Sarah D. Partee had any mules, cattle, farming implements, household furniture, &c., subject to seizure & sale under said execution. Denies that said Robert Bowman was the attorney of said W'm B. & Sarah D. Partee in the matter of said sale or in any of the proceedings in said Stuart judgment.

Respondent knows nothing of the reliance of said complainants in said R. Bowman as trustee as charged in said bill, and if to be effected thereby, demands strict proof. Respondent of his own knowledge knows nothing of said Stuart claim being embraced in said trust deed, but is informed that it was not.

194 Respondent further answering, says, that he admits that lands at the time of said sale were selling low. Denies that lands at forced sales at that time would bring nothing. This respondent, at the time of said sale, says that he knew that said William B. and Sarah D. Partee had a good many creditors, and from this cause as well as others this respondent expected that there would be bidders at said sale. Respondent denies that he is not a bona fide purchaser of said lands.

Denies that he knew of any infirmities in the title which he acquired to said lands, and at that time this respondent understood from said W. B. Partee that said trust deed had failed by reason of the non-acceptance of the creditors of the provisions thereof. Respondent denies that he never paid any money for said lands.

Respondent further answering, says, that he bought said lands in good faith for himself, believing that he was getting a good title. Respondent, at the time of the purchase of said lands, knew or had understood that there was an incumbrance of over eight thousand dollars, principal and interest, in favor of Edward Drenning, adm'r of Christopher Todd, deceased, which had priority of satisfaction out of said lands bought by respondent, to said Stuart judgment, and this fact was
195 made known on the day of sale, and this respondent bought subject to said incumbrance. Respondent says, that on the day of the sale of said lands he paid five hundred & fifty dollars, the amount of his bid and for which said lands were struck off to him, subject to said incumbrance. Knows nothing of said correspondence between said complainants and R. Bowman, and if to be effected thereby, demands strict proof. Denies that William B. and Sarah D. Partee have been in possession of said lands since said sale. Admits the execution of said trust deeds to F. Barksdale as trustee, for benefit of Nelson Lamphier & Co.

This respondent further answering, says, that said trust deeds of 1869 & 1870 were executed for a balance of supplies furnished him the year previous, and for supplies advanced and to be advanced to this respondent for said years respectively. Denies that said deeds were made to secure antecedent debts of W. B. and Sarah D. Partee. Denies that said deeds were made at the instance of W. B. Partee as charged in said bill. Denies that said deeds are for any other consideration than expressed upon the face of said deeds. Denies that said debts embraced or expressed in said deeds have been paid or were paid before the sale by F. Barksdale as trustee. Respondent says that at the time of
196 said sale by said trustee there was over thirty thousand dollars due by him to said Nelson Lamphier & Co., which were created by this respondent on his own account with them and no part of which was the debt of W. B. and Sarah D. Partee. Denies that there was any agreement or understanding before said sale, that this respondent should have the right to redeem said lands as charged in said bill, or that the same was not to operate as a complete sale. Denies that said W. B. & Sarah D. Partee and this respondent have been in possession of said lands since the late war, receiving the rents, issues, and profits thereof as charged in said bill.

Respondent says that up to the time of said sale, Jan'y 4, 1869, by the sheriff of Yazoo County under said Stuart judgment, the said W. B. & Sarah D. Partee were in possession thereof with this respondent; since then up to time of said sale, this respondent was in possession, cultivating and receiving the profits, and since said sale by said F. Barksdale, this respondent has had possession of said lands for said T. A. Nelson, as his agent and manager, and has by his directions paid over the profits to Nelson, Lamphier & Co.

Respondent further says that the said T. A. Nelson is a bona fide purchaser of said lands, and if there were any defects in the title to
197 said lands the said Nelson, as this respondent is informed and believes, had no knowledge thereof.

To the special interrogatories propounded to him, this respondent says to—

1st. That he was under no obligation to said complainants to give them notice of said sale, and this respondent, nor as he is informed and believes, did William B. and Sarah D. Partee have any notice or knowledge of said sale under said venditioni until about one week previous to the time it occurred.

2d. The said lands bought by me at said sale were considered valuable, or good lands, but the fences were broken down and the houses in a dilapidated condition. The improvements on said lands had been devastated by both armies during the late war, and no other improvements had been put on them since the close of the war up to day of sale, except one cabin. I think said lands were worth about ten thousand dollars at public sale. There were lands enough for two plantations. The bid made by me was five hundred and fifty dollars; this was the last bid made on said lands. There had been previous bids made by other parties. The said lands were sold subject to said decree in favor of Drenning, administrator, as aforesaid. The said bill
198 of $550 was paid on the day of sale, as I now remember, to R. Bowman, as the attorney of Stuart. The money was first offered, as I now recollect, to the sheriff, or Jno. T. Heth, his deputy, who requested me to pay it over to Wilkinson & Bowman, the attorneys of said Stuart, of which firm R. Bowman was a member.

3d. I did not compromise the judgment of Stuart, and to the best of my knowledge, information, and belief it never has been compromised. Before said sale the said W. B. Partee made several efforts to compromise it, but failed on every attempt. I do not know why the release of errors was made, and don't know who made it.

4th. Knows nothing of his own knowledge.

5th. I never purchased said judgment at any time, and to the best of my knowledge, information, and belief, said judgment was never purchased by said W. B. and Sarah D. Partee, or either of them, but is still held and owned by Jas. Stuart.

I was present when said lands were sold under said writ of venditioni exponas. They were sold on the 4th of January, 1869, by S. M. Dyer, sheriff of Yazoo County, Mississippi. There was the amount of my bid, $550.00, paid by me, as before stated.

Int. 7. The lands bought by me are in possession of T. A. Nel-
199 son by me as his agent and manager, aforesaid, and I am in possession of a portion of the other lands. After said sale the said W. B. and Sarah D. Partee remained a short time on said lands bought by Stuart, they claiming a homestead thereon, which was disputed by Stuart, and a lawsuit ensued by reason of the claim of said homestead between them and said Stuart. About a year after said sale they left said lands, and have resided ever since in St Louis, State of Missouri.

Int. 8. The said debt with Nelson, Lamphier & Co. was created for plantation supplies, money advanced to this respondent after the purchase by him of said lands, and balance furnished for this respondent and his deceased brother, William Partee, who were partners in the planting business up to the time of his death in the year 1868. Respondent does not believe any examination of records was made as to the title of said lands. This respondent had no attorney, nor does he believe that Nelson, Lamphier & Co. had, except that respondent is informed and believes that S. O. Nelson advised with Judge W. R. Yerger in regard to the form of the trust deed.

Having fully answered, respondent prays to be hence dismissed with his reasonable costs, &c.

J. A. P. CAMPRELL.
R. BOWMAN,
For Def't.

200 UNITED STATES OF AMERICA,
Southern District of Mississippi:

Before me, W. H. Mangum, a United States commissioner in and for the district aforesaid, personally appeared James D. Partee, defendant in the foregoing answer, who on oath says that the matters and things therein stated as of his own knowledge are true, and those stated upon the knowledge and information of others he believes to be true.

JA'S D. PARTEE,

Sworn to and subscribed before me at Yazoo City, this 30th day of July, 1873.

[SEAL.] W. H. MANGUM,
United States Commissioner for the Southern Dist. of Mississippi.

(Endorsed:) Filed with Exhibit 1 this August 1, 1873. Geo. T. Swann, cl'k.

Exhibit No. 1 to answer of J. D. Partee.

W'm B. Partee, et ux., p'r sheriff, to James D. Partee.

Know all men by these presents that whereas on the 6th day of June, 1866, in the circuit court of Yazoo County, State of Mississippi, James Stewart recovered judgment for six thousand eight hundred and
201 ninety-four $\frac{86}{100}$ dollars ($6,894 $\frac{86}{100}$) against William B. Partee and Sarah D. Partee, his wife, on which judgment execution was issued from said court on the 1st day of January, 1867, which execution was directed to the sheriff of said county, commanding said sheriff that of the goods and chattels, lands and tenements of the said William B. Partee and Sarah D. Partee, he cause to be made the aforesaid sum of money together with interest and costs; and whereas on the 9th day of April, 1867, the said sheriff, by virtue of said execution, levied on the following lands as property of said defendants, to wit: Lots No. 3, 4, 5, 6, 7, & 8, and 28 acres in lot 1, sec. 5, all in sec. 6; N. E. ¼ sec. 8; S. ½ sec. 9; N. E. ¼ and S. ½ of N. W. ¼ & S. ½ sec. 10; the W. ½ of N. E. ¼ and N. W. ¼ and S. ½ sec. 11; all sec. 14; N. ½ and E. ½ of S. E. ¼ sec. 15; all sec. 16; N. ½ and S. E. ¼ sec. 23; W. ½ sec. 24; township 9, range 4 west, N. ½ sec. 1; N. W. ¼ sec. 2; N. E. ¼ sec. 3; township 9, range 5 west, lot 7, sec. 31; lot 7, sec. 32; township 10, range 4 west, lot 6, sec. 34; lot 7, sec. 35; lot 5, sec. 36; township 10, range 5 west, and lying and being in Yazoo County, State of Mississippi, as property of said defendants; and whereas on the 7th day of December, 1868, a writ of venditioni exponas was issued from the clerk's office of said court, directed to the sheriff of said county, commanding him to expose
202 to sale the aforesaid lands to satisfy the aforesaid sum of money, and all interest and costs, which said writ was duly received by said sheriff; and whereas I, Samuel M. Dyer, sheriff of said county, by virtue of said writ, did on the first Monday of January, 1869, that being the 4th day of said month, after giving due and legal notice of the time, place, and terms of sale, exposed the aforesaid lands to sale at public auction before the court-house door in Yazoo City to the highest bidder

for cash, when and where James D. Partee became the purchaser of the following parcels of said lands, to wit: The south half of section nine; the N. E. ¼ and S. ½ of N. W. ¼ and S. ½ sec. 10; the W. ½ of N. E. ¼ and N. W. ¼ and S. ½ sec. 11; all sec. 14; N. ½, sec. 15; E. ½ of S. E. ¼ sec. 15; N. ½ and S. E. ¼ sec. 23; the W. ½ sec. 24, all in township 9, range 4 west, for the sum of five hundred and fifty dollars (subject to an incumbrance), that being the highest and best bid made for said lands:

Now therefore and in consideration of the premises aforesaid, and of the sum of five hundred and fifty dollars to me in hand paid by the said James D. Partee, the receipt of which is hereby acknowledged, I do by these presents grant, bargain, sell, and convey the aforesaid lands to said James D. Partee, to have and to hold the same to him and his heirs and assigns forever, together with all the appurtenances there-
203 unto belonging, as fully and completely as I am authorized and empowered to grant, bargain, sell, and convey by the proceedings aforesaid, and by law as sheriff as aforesaid.

Given under my hand and seal and dated this 4th day of January, A. D. 1869.

S. M. DYER, *Sheriff.* [SEAL.]

STATE OF MISSISSIPPI,
Yazoo County:

Personally appeared before me, M. A. Jenkins, clerk of the probate court of said county, Sam'l M. Dyer, and acknowledged that he signed, sealed, and delivered the foregoing deed for the uses and purposes and on the day and year therein written as his act and deed.

Given under my hand and seal of said court January 14th, A. D. 1869.

[SEAL.] M. A. JENKINS, *Clerk,*
By M. W. SMITH, *D. C.*

Filed & recorded Jan'y 14th, 1869. $2 stamps on deed.
M. A. JENKINS, *Clerk,*
M. W. SMITH, *D. C.*

THE STATE OF MISSISSIPPI,
Yazoo County:

I, A. T. Morgan, clerk of the chancery court of said county, do hereby certify that the foregoing three pages contain a true and correct copy and transcript of the deed from W'm B. Partee, et ux., per sheriff,
204 to James D. Partee, together with the certificates & proofs thereof, as fully & completely as the same appears & remains of record in my office in book Y, on pages 388 & 389, of the records of deeds of Yazoo County.

Given under my hand and seal of office this 30th day of July, A. D. 1873.

[SEAL.] A. T. MORGAN, *Clk,*
By N. T. PUGH, *D. C.*

(Endorsed:) Filed with answ'r Aug., '73. Geo. T. Swann, cl'k.

And afterwards, to wit, on the 4th day of August, A. D. 1873, the following replications to the answers of Ja's D. Partee and F. Barksdale were filed in the clerk's office of said court, which are in the words & figures following, to wit:

Replication to answer of J. D. Partee.

In the circuit court of the United States for the southern district of Mississippi. In equity.

CANAL BANK OF LA. ET ALS.
vs.
W. B. PARTEE ET ALS.

And the said complainants, as to the answer herein filed by James D. Partee, says that the matters and things stated in the bill are true in manner and form as therein and thereby set forth and alleged,
205 and that the statements, charges, &c., contained in said answer are untrue, and constitute no sufficient defence; all of which these repliants stand ready to maintain and prove as this court may direct.

NUGENT & YERGER,
Sol's for Complainants.

(Endorsed:) Filed Aug. 4, '73. Geo. T. Swann, cl'k.

Replication to answer of F. Barksdale.

In the circuit court of the United States for the southern district of Mississippi. In equity.

CANAL BANK OF LA. ET ALS.
vs. 185.
WILLIAM B. PARTEE ET ALS.

And the said complainants for replication to the answer of F. Barksdale herein filed say that the matters and things stated in the original bill are true in manner and form as therein and thereby set forth and alleged, and that the statements and responses contained in said answer are untrue, &c.; and this these repliants stand ready to maintain and prove as this honorable court may direct. Wherefore, &c.

NUGENT & YERGER,
Sol's for Comp'lts.

(Endorsed:) Filed Aug. 4, '73. G. T. Swann, cl'k.

206 And afterwards, to wit, on the 10th day of November, A. D. 1873, the following affidavit of non-residence was filed in the clerk's office of said court, which is in the words & figures following, to wit:

Affidavit of non-residence.

In the circuit court of the United States for the southern district of Mississippi. In equity.

CANAL BANK OF LOUISIANA ET ALS.
vs. 185.
W. B. PARTEE ET ALS.

Personally appeared before me, clerk of said court, W. L. Nugent,

of counsel for complainants, who, being sworn, says that William B. Partee and Sarah D. Partee, his wife, defendants in the above cause, have removed themselves out of this State, and now reside and have their post-office address at S't Louis, in the State of Missouri; that Thomas A. Nelson, another defendant to said cause, resides in and has his post-office address at Memphis, in the State of Tennessee, and at New Orleans, in the State of Louisiana, and that James Stewart, another defendant herein, resides in, and has his post-office address in, the city of New Orleans, Louisiana, and that said defendants cannot be served with process herein.

W. L. NUGENT,
Sol'r, &c.

207 Sworn to and subscribed before me this 10th November, A. D. 1873.

GEO. T. SWANN, *Clerk.*

(Endorsed:) Filed November 10th, 1873. Geo. T. Swann, Clerk.

And on the same day and date as before, to wit, the 10th day of November, A. D. 1873, being a day in the regular November term, A. D. 1873, of said court, the following order was made in said cause in words & figures following, to wit:

Order of publication.

CANAL BANK OF LOUISIANA ET AL.
vs.
W. B. PARTEE ET AL. } In equity.

On opening the papers in this cause, and it appearing from the affidavit of W. L. Nugent, solicitor, &c., therein filed, that William B. Partee and Sarah D. Partee, his wife, James Stewart and Thomas A. Nelson are non-residents of this State, and cannot be served with process therein, it is ordered, adjudged, and decreed that the said defendants enter their appearance herein on or before the 1st Monday in February next, at rules to be held by and before the clerk of this court, and plead, answer, or demur to the complainant's bill, or the several allegations thereof will be taken for confessed as to them; and it is further ordered by the court, and so adjudged and decreed,
208 that a copy of this order be published in the Weekly Mississippi Pilot, a public newspaper of this State, published in the city of Jackson once a week for six consecutive weeks, and transmitted by mail by the clerk of this court, postage prepaid, to each of said defendants at their post-office address designated in the affidavit filed as aforesaid.

Ordered, adjudged, and decreed, this 10th day of November, A. D. 1873.

R. A. HILL, *Judge.*

And on the 28th day of November, A. D. 1873, the following agreement of counsel was filed in the clerk's office of said court, which is in the words & figures following, to wit:

Agreement of counsel.

U. S. circuit court, southern district of Mississippi.

CANAL BANKING COMPANY
vs.
WILLIAM B. PARTEE ET AL.

It is agreed between the solicitors for complainant in the above case and for defendants, Robert Bowman, F. Barksdale, and James D. Partee, that neither party need to take depositions in said case until it is regularly at issue as to all parties defendant.

Nov. 28th, 1873.

NUGENT & YERGER,
For Complainant.
J. A. P. CAMPBELL,
For Bowman, Barksdale, and J. D. Partee.

(Endorsed:) Filed Nov. 28, 1873. Geo. T. Swann, cl'k.

209 And on the 30th day of January, A. D. 1874, the following appearance was filed and entered in said cause, which is in the words & figures following, to wit:

Appearance of W. B. & Sarah D. Partee, Tho's A. Nelson, & Ja's Stuart

In the circuit court of the United States for the southern district of Mississippi. In equity.

CANAL BANK OF LA. & OTHERS
v.
WILLIAM B. PARTEE ET AL. } No. 185, n. s.

We enter an appearance in the above-stated case for defendants, William B. Partee, Sarah D. Partee, Thomas A. Nelson, and James Stuart, upon an agreement with W. L. Nugent, solicitor for complainants, to be allowed until 1st Monday of May, A. D. 1874, to file answers or otherwise make defence to said bill of complaint.

Jan. 30, 1874.

R. BOWMAN,
J. A. P. CAMPBELL,
Solicitors.

(Endorsed:) Filed & entered January 30, 1874. Geo. T. Swann, cl'k.

And afterwards, to wit, on the 11th day of February, A. D. 1874, the answer of Thomas A. Nelson was filed in the clerk's office of said court, which is in the words and figures following, to wit:

Answer of T. A. Nelson.

210 To the honorable the judge of the circuit court of the United States for the southern district of Mississippi, sitting in equity:

The answer of Thomas A. Nelson, of the city of Memphis, State of Tennessee, to the bill of complaint exhibited against him and others in this honorable court, by the president, directors, and company of the Canal Bank of Louisiana, of the city of New Orleans, in the State of Louisiana.

This respondent, saving and reserving to himself all manner of excep-

tions to the manifold errors and misstatements in said bill of complaint contained, for answer thereto, or so much thereof as he is advised is material for him to answer, answering, says: That of his own knowledge he knows nothing of the ante-bellum indebtedness of said William B. and Sarah D. Partee to complainants, and therefore neither admits nor denies the same, and if in any manner to be affected thereby, requires strict proof.

Respondent, further answering, says, that of his own knowledge he knows nothing of the novation of said notes, as charged in said bill, but is informed and believes, and so says, that there was a negotiation carried on by W. B. Partee and complainants for the novation of said notes, as well as the claims of other creditors, but said negotiation
211 failed and was never consummated, and this respondent, if in any manner to be affected by this charge in said bill, demands strict proof.

Respondent, further answering, says, that he believes it to be true that said trust deed in said bill mentioned was executed by said Sarah D. and W'm Partee, but this respondent further says that he is informed and believes, and so says, that neither of said complainants, nor any of the other creditors of said Sarah D. Partee, had at the time said deed was executed accepted said terms of settlement as provided in said deed, by the surrender of their original notes and the acceptance of the new or novated notes, and that said deed was only executed in contemplation or anticipation of a settlement being made on the basis thereof.

Respondent, further answering, says that he is informed and believes, and so says, that neither said complainants or any of them accepted the provisions of said trust deed after its execution according to the terms thereof.

This respondent, further answering, says that he is informed and believes, and so says, that complainants did not surrender to said
212 Sarah D. and William B. Partee the old or original notes in said trust deed mentioned, but that said complainants, the Canal Bank (which is sometimes called the Canal Bank and sometimes the Canal & Banking Company) of New Orleans, after said pretended acceptance of said trust deed, and after said pretended novation, brought suit on the original ante-bellum note in the circuit court of Yazoo County, Mississippi, and recovered judgment thereon, on the 11th day of June, 1868, for the sum of seven thousand five hundred and forty-eight dollars and eighty cents, and the said complainant the Crescent City Bank also brought their suit in the circuit court of said county on the original note of Sarah D. Partee, approved by her husband, the said William B. Partee, being the note pretended in said bill to be compromised or novated, and recovered judgment thereon in said court on the 11th day of June, 1868.

This respondent, further answering, says that among the creditors of said Sarah D. Partee, named in said trust deed, that R. A. Barkley, W'm Silliman, S. B. Numan, esq., W'm McLean, Johathan Montgom-
Seaman & Peck, and perhaps some others, after said pretended ac-
ceptance of said trust-deed, and after said pretended novation in
213 said bill of complainants mentioned, brought suit in the circuit court of Yazoo County, Mississippi, on their original ante-bellum claims and recovered judgments respectively thereon; certified copies of the proceedings and judgments in said suits will be provided and read on the final hearing of this cause.

Respondent, further answering, says that in order to carry out the

composition of the debts due by said Sarah D. Partee to the creditors named in said trust-deed according to the terms thereof, the novated or new notes of said Sarah D. Partee and W. B. Partee, as described in said bill, as this respondent is informed and believes, were left with the attorney of said complainants, the Citizens' and Canal Bank, and perhaps others of said complainants, for the purpose of consummating a settlement with all of said creditors upon the basis of terms provided in said deed, and that said original notes were not delivered in lieu of said novated notes, to said Sarah D. & W'm B. Partee or to either of them.

Respondent, further answering, says that by the terms of said trust-deed it is expressly provided that if any of the creditors of said Sarah D. Partee shall fail within ninety days from the date thereof to
214 signify in writing their acceptance of the terms of settlement under said deed and, payment of their debts according to the provisions of the same, and any creditor failing to do so should be considered as refusing the same, and said creditors so failing to accept should be barred of all benefit thereof, as will more fully appear by reference to the copy of said deed filed as an exhibit to complainants' bill.

Respondent, further answering, says that he is informed and believes, and so says, that said complainants, nor either of them, nor any of the creditors mentioned in said bill, ever signified in writing their acceptance of the terms of settlement under said deed, according to the provisions thereof, either to said trustee or W'm B. & Sarah D. Partee, and he demands strict proof thereof.

Respondent, further answering, says that he is informed and believes, and so says, that said complainants did not, as charged in said bill, avail themselves of the provisions of said deed of trust, and if in any manner to be effected by this allegation, demands strict proof.

Respondent, further answering, says that he is informed and
215 believes that notwithstanding said receipt, an alleged copy of which is marked "Exhibit D" to complainants' bill, yet said original notes named therein were not surrendered to said Sarah D. Partee, and even if they were, no notice was ever given thereof to the trustee in said trust-deed, and if in any manner to be effected by this allegation in said bill, this respondent demands strict proof.

This respondent, further answering, says that if any such agreement as is alleged in said bill was made by William B. Partee, as set forth in said receipt (Exhibit D) to complainants' bill, was, as is shown on the face of said alleged receipt, was made long after the expiration of the ninety days for the acceptance of said terms of said trust-deed, and the said receipt is not signed by Sarah D. Partee, the wife of W'm Partee, who was the debtor in said original notes and the true owner of said lands and the other property embraced in said , nor does it appear by said bill that said W. B. Partee was authorized as the agent of said Sarah D. Partee to sign said receipt or carry out said settlement, and he claims the same benefit thereof as if he had specially demurred to that part of said bill, or pleaded the same thereto.

216 This respondent, further answering, says that he is advised and believes, and so says, that said complainants and other creditors of said Sarah D. Partee having failed within the time and in the manner prescribed by said trust-deed to accept the provisions thereof, that said deed by reason thereof became inoperative and void, and he claims the same benefit thereof as if he had specially pleaded the same.

Respondent admits the suit and judgment of James Stuart against W'm B. and Sarah D. Partee.

Respondent, further answering, says that he believes it to be true that said W. B. & Sarah D. Partee made a release of errors in the said judgment against them in favor of James Stuart.

Respondent, further answering, says that he is informed and believes, and so says, that said release of errors was accepted and agreed to by said James Stuart for the following reasons: that by the laws of the State of Mississippi then in force, said defendants in said judgment could have taken up the same to the high court of errors and appeals of said State to operate as a supercedeas thereof, with bond for costs,
217 and said case by the ordinary proceedings in said court would have been long protracted and delayed; that at the time said defendants in said judgment could have sued out an injunction without bond or affidavit, and thus have delayed the collection of said judgment; that said William B. Partee and Sarah D. Partee had given assurances to said plaintiff in said judgment that he would pay the same in the following fall.

Respondent, further answering, says that he admits that the said Partee and wife prosecuted a writ of error from said judgment in the circuit court of Yazoo County, Mississippi, to the high court of errors and appeals, but from his knowledge, information, and belief denies that said writ of error was dismissed upon any pretence or device between them, the said Partee and wife and Robert Bowman, trustee under said trust-deed, with the fraudulent intent to hinder, delay, and defraud the said complainants. This respondent says that he is informed and believes, and so says, that said writ of error was prosecuted by said W. B. Partee & wife, without the sanction, approval, or previous knowledge of said Robert Bowman.

218 Respondent, further answering, says that he is informed and believes, and so says, that said writ of error was prosecuted by said Partee and wife under the laws of this State, as they had a right to do, principally for the delay, and that the attorneys of said Stuart to said writ of error plead in said high court of errors and appeals said release of errors in said complainants' bill mentioned, and that upon said plea, said judgment of said circuit court of Yazoo County in favor of said James Stuart against said Sarah D. Partee was affirmed by said court of errors and appeals, a certified copy of said writ of error, plea, and judgment of said high court of errors and appeals will be read on the final hearing of this cause.

Respondent, further answering, says that in the prosecution of said writ of error said Partee and wife were represented by M'r Pruvitt, an attorney of their own choice, who fully understood and attended to their interests. Respondent is advised and believes, and so says, that there was no irregularity in the said judgment of Stuart against Partee and wife, or in the proceedings thereto, as to render the same void, as
219 charged in said bill, and if there were such, this court has no jurisdiction to correct the same, and if there were any such, the same has been cured by the judgment of said high court of errors and appeals, and this respondent claims the same benefit thereof as if he had specially pleaded the same.

Respondent further answering says that he is advised and believes, and so says, that said release of errors was valid, and that being based upon indulgence of payment of said judgment, that this was a sufficient consideration and denies that it was not executed according to law, as he is advised and believes; admits the levy of said execution, and says

that said lands were not sold by reason of said writ of error which was sued out as a supersedeas of said judgment.

Respondent further answering says that he is informed and believes, and so says, that after the affirmance of said judgment by said high court of errors and appeals, said writ of venditioni exponas was sued by the attorneys of James Stuart, viz, Wilkinson & Bowman, to sell said lands so previously levied on under said writ of fieri facias.

This respondent further answering says that he is advised that
220 said return on said writ of fieri facias does not avoid said sale under said venditioni exponas, but said return, at most could amount to only an irregularity therein which would not vitiate said sale. Respondent admits the sale and the deeds by S. M. Dyer, sheriff of said county of Yazoo, to James Stuart and James D. Partee. Respondent, from information and belief, denies that John T. Heth was not the deputy of S M. Dyer, the sheriff, at the time stated, and if in any manner to be effected by this allegation, demands strict proof.

Respondent, further answering, says that he is informed, and believes, and so says, that for a long time previous to said sale under venditioni exponas, and said levy under said writ of fieri facias, and at the time of said sale of said lands to said Stuart and James D. Partee, that said Heth was acting as the deputy of said Dyer, with his sanction and approval; and this respondent is advised and believes, and so says, that said Heth (if, as he does not admit, was not the regular appointed deputy of said Dyer) was a deputy de facto, and all his acts as such as to third parties was valid and legal.

Respondent, further answering, says that, although the return
221 on said writ of venditioni exponas of said sheriff may show that said lands were sold on the 5th of January, 1869, yet this respondent is informed and believes, and so says, that they were in fact sold on the 4th day of January, 1869, being the first Monday of said month, and a regular sale day according to law, and that due and proper notice as required by law was given of the time and place of said sale, and that said return is simply a clerical error on the part of said sheriff or his said deputy. This respondent is advised and believes, and so says, that from such advice and belief he denies that the said writ of venditioni exponas was issued without authority of law or in contravention of the statute; and if there was any irregularity in the issuance thereof, it was not such as to avoid said sale of said lands as to innocent purchasers. Respondent further says that he is advised and believes, and so denies, that the return of said vendi. is such as to avoid the sale thereunder, and in like manner denies that the judgment on which said sale is predicated is void or voidable. And respondent is further advised that said complainants cannot in this proceeding reverse or set aside
222 said judgment. Respondent in like manner denies that said release of errors is void, and that said sale was not advertised according to law, or made on a sale day; denies, from his information and belief, that the proceedings under which said sales were made were fraudulent and void, or intended to hinder, delay, and defraud the creditors of W'm B. and Sarah D. Partee, or that the sheriff failed to give the notice of sale as required by law, or that said sale was not on a regular sale day. Respondent is advised, and believes, and so says, that even though the names of the purchasers and the place of sale are not mentioned in said writ, yet said sales are not, by reason thereof, vitiated or void.

Respondent, further answering—that from information and belief he denies that said James D. Partee was not present at said sale; that

although James Stuart was not actually present, yet he was represented by his attorneys, Wilkinson & Bowman, and by his agent, Edward Drenning; denies, from information and belief, that no part of the purchase-money was paid, or that said sale was consummated upon an agreement between said R. Bowman, William B. and Ja's D. Par-
223 tee that part of the lands should be bid in by said Stuart for his debt, and the residue by James D. Partee.

Respondent, further answering, says that said sale, as he is informed and believes, was conducted by said Dyer, sheriff, under the advice of said Wilkinson & Bowman, the attorneys of said Stuart and said Edward Drenning, and was bona fide and free from fraud or collusion. Respondent is informed and believes that there was no previous understanding between said R. Bowman & W'm B. Partee as to said sale, and he is further informed and believes that there was no agreement that said Partee should pay said Bowman his fee as attorney.

Respondent, further answering says, from his information and belief, he denies that there was any agreement or understanding between said Bowman and Partee to secure the enjoyment and possession of said property to W'm B. & Sarah D. Partee, or to keep the same in the family, as charged in said bill.

Respondent, further answering, says that from his information and belief he denies that said William B. & Sarah D. Partee, or either of them, at the time said execution was levied on said lands, or any time thereafter until the day of said sale, had any personalty of any
224 kind upon which a levy could be made to satisfy said judgment of James Stuart, or any part thereof. Respondent, from information and belief, denies that said Bowman ever gave any directions or orders to said Dyer, sheriff, as to which property should be levied on under said execution, or that said Bowman was, as to said suit of James Stuart, or in any of its proceedings, the attorney of said William B. and Sarah D. Partee, or in any manner whatever representing their interests or views, but, on the contrary, this respondent is informed and believes that said William B. & Sarah D. Partee had an attorney other than said Robert Bowman, who represented them.

Respondent, further answering, says that from his information and belief the said complainants did not rely on said Robert Bouman, as trustee, for the protection of their debts as charged in said bill, because they did not, as this respondent is informed and believes, ever accept the provisions of said trust-deed as required.

2d. Because they never gave said trustee any notice of their acceptance of the provisions of said trust-deed as required.

3d. That, although the first of said pretended novated notes was due on the 1st of January, 1868, the said trustee was never requested
225 to act or to take steps to enforce payment thereof under said trust deed.

4th. Because said Canal Bank and Crescent City Bank, complainants, brought suit on the original notes, pretended to be settled on the basis of said trust-deed, in the circuit court of Yazoo County, Mississippi, and at the time of sale under said vendi., issuing under the judgment of said Stuart, said Canal and Crescent City Bank had attorneys resident in Yazoo City, the county-seat of said county of Yazoo, who had full notice and knowledge of said sale.

5th. Because this respondent is informed and believes that said Canal & Crescent City Bank gave verbal notice to said R. Bouman, the trustee under said trust-deed, and one of the attorneys of said Stuart, that

they had not and would not accept the settlement provided in said deed, as well also did other creditors in said deed make the like statement.

Respondent, further answering, says that although said *said* complainants may have had ample means to pay off said judgment, yet they knew at the time, or a part of them, through their attorneys in New Orleans, that it was a prior incumbrance and lien, and had full
226 knowledge thereof from November , 1861, the date of said deed; yet, as far as this respondent knows, no offer was made to pay the same, and as the attorneys of said complainants, or a part of them, had put said original claims in the hands of attorneys at Yazoo City, and as all of them had failed to signify their acceptance in writing to said R. Bouman, of the provisions of said deed, this respondent says that for these reasons he does not believe it to be true that they looked to said trustee to give them notice of any proceedings in said suit and judgment of said Stuart, and as he is informed of the facts in all of said proceedings, says that there was no fraud on the part of said Stuart or of said R. Bouman, or W. B. and Sarah D. Partee.

This respondent, from information & belief, denies that the debt of said Stuart reduced to judgment was included in said trust-deed. Admits that the lands in Yazoo were of far greater value than those of Tallahatchie and Sunflower Counties, and as this respondent is informed, at the time of said sale lands were at comparatively depreciated value, but is advised that said Stuart nor any other judgment creditor was by law bound to wait for a rising market of lands to make their
227 judgment. Denies, from information and belief, that said sale was made to hinder and delay complainants. Denies, from information and belief, that James D. Partee was not a bona-fide purchaser, without motive of fraud, if any there was, and demands strict proof.

Respondent, further answering, says that at the time of said sale to James D. Partee, there was on that portion purchased by him a lien under a decree of the chancery court of Yazoo County, Mississippi, in favor of Edward Drenning, administrator of Christopher Todd, deceased, amounting, principal and interest, to over eight thousand dollars; that said lien was, at the time, wholly unsatisfied, and that this fact was made known by said administrator at the sale. The lands purchased by said James D. Partee were known as the "No Mistake" plantation, and said decree was based on a devise of the will of James Dick, who bequeathed said lands to said Sarah D. Partee. A certified copy of said decree will be produced and read on the hearing of this cause. This respondent says that he is informed and believes, and so says, that at the time said trust-deed was made that lands in the Yazoo Valley were of much greater value than at the time of said sale.

228 Respondent further answering says, that from information and belief he denies that said Robert Bowman, as trustee, knew that said complainants had in good faith accepted said new notes and trust deed and were reposing on him in the premises, and this respondent also from information and belief, denies that said Partee had knowledge of complainants' acceptance of said notes in good faith. Respondent denies that said lands, at the time of said sale, were worth forty or fifty thousand dollars, but believes that they brought their market value, for as this respondent is informed and believest there were a large number of persons present at said sale, amongst whom was R. A. Barkley, the judgment creditor second in priority to said Stuart, and N. G. Nye, the attorney for several other judgment crediors, they being there present to make said lands realize their value

or secure their money. Denies from information and belief that the sum of $5,750, or any other sum, was fixed by parties as falsely charged in said bill, to be bid for said lands, or that there was any fraudulent purpose in said sale to hinder and delay creditors, and if in any manner to be effected by this or other allegations in said bill demands
229 strict proof.

This respondent, from information and belief, denies that no money was paid on the day of said sale, and says that said James D. Partee paid the full amount of his bid, on the day of said sale, and that said W. B. & Sarah D. Partee, having no other visible property on which a levy could be made, the said Stuart afterwards paid said costs. Respondent admits the trust deeds executed by James D. Partee and Jeanie, his wife, at the times and dates set forth in said bill to Fountain Barksdale, trustee, for use of Nelson, Lamphier & Co. Respondent denies that said sum of $27,000.00, mentioned in the trust deed of 1869, and the amount of thirty-three thousand five hundred dollars in the trust deed of 1870, or any part thereof, represented antecedent debts of W'm B. and Sarah D. Partee, or either of them, nor was said trust deeds made or intended to secure any debt or part of a debt due by said Sarah D. and W'm B. Partee, or either of them. Denies that said money advanced to said James D. Partee, and secured by said trust deeds, was paid off and dischargedby said James D. Partee. Denies, as before, that any "old debt" of Sarah D. and W'm B. Partee or
230 either of them was embraced in said trust deeds. Denies that any debt of any kind of W'm B. and Sarah D. Partee was embraced in or secured by said trust deed.

This respondent, further answering, says that at the time of the execution of said trust deeds, the said William B. and Sarah D. Partee were not nor was either, indebted to said firm of Nelson, Lamphier & Co. in any manner whatever, nor were they indebted to the firm of S. O. Nelson & Co., the predecessors of said firm of Nelson, Lamphier & Co. Denies that there was any secret agreement or understanding between this respondent or of the firm of Nelson, Lamphier & Co. and James D. Partee at the time of said sale in said bill mentioned, by F. Barksdale, trustee, that the same was not to operate as a complete sale and conveyance. Denies that at the time of said sale or before that there was any agreement that James D. Partee was to have the benefit or right of redemption, as charged in said bill. Denies that said James D. Partee, William B. Partee, and Sarah D. Partee are not now or were at the time of filing said bill, or have been since said sale, in possession of said lands so sold by F. Barksdale, trustee, receiving, using, and appropriating the rents, issues, and profits thereof. This respond-
231 ent says that at the time of filing said bill the said William B. and Sarah D. Partee were, as he is informed and believes, residents of the city of S't Louis, in the State of Missouri, and they there resided at the time of said sale by said Barksdale as trustee. Respondent admits that said trust deed made by Sarah D. and William B. Partee was recorded as stated in said bill, in the record of deeds of Yazoo County, Mississippi. This respondent says, however, that said judgment of James Stuart was rendered against said Sarah D. Partee and W. B. Partee to be made of the separate property of said Sarah D. Partee, on the 6th of June, 1866; that said trust deed under which complainants pretend to claim was not executed until the 9th of November, 1866; that said judgment of Stuart had been affirmed by the high court of errors and appeals of the State of Mississippi, and even if said deed was valid, this respondent is advised that said judgment was

entitled to priority of satisfaction over the creditors named in said trust deed.

This respondent, further answering, says that if there were any irregularities in said suit, proceedings, and judgment of Stuart against W. B. Partee and wife, or even fraud, which he does not by any
232 manner of means admit, yet this respondent and the firm of Nelson, Lamphier & Co. had no notice or knowledge thereof; that believing James D. Partee had bought said lands in good faith, and had a good title thereto, subject only to the said decree of Edward Drenning, administrator of Christopher Todd, deceased, the firm of Nelson, Lamphier & Co. upon the faith of the security of said trust deeds to F. Barksdale were induced in good faith to advance the amounts of money therein named, and upon said James D. Partee failing to pay the same, this respondent, at said sale by said trustee, in good faith and for a valuable consideration, bought said property; and whatever of truth, if any at all, may be in complainant's bill, this respondent claims that he is an innocent purchaser without notice, and claims the same benefit thereof as if he had specially pleaded the same. Respondent denies that he and his said firm are not bona fide purchasers, and again says that if there was any infirmity, fraud, irregularity, or impropriety in said judgment or execution, or other proceedings thereunder, or of any proceedings in the suit precedent to said judgment, they had no notice or knowledge thereof. This respondent further says that in the latter part of
233 the year 1865 the said defendant James D. Partee and his brother went into the planting business under the firm-name and style of Partee & Brother. The firm of which this respondent was a member, under the name and style of S. O. & T. A. Nelson & Co., furnished them with money and supplies to carry on their planting business in Yazoo County, Mississippi. William Partee, the brother of James D. Partee, died in May, 1868. The firm of S. O. & T. A. Nelson & Co., about the 1st of October, 1867, was changed into that of Nelson, Lamphier & Co. At the time of the death of William Partee, said firm of Partee & Brother was largely indebted to said firm of Nelson, Lamphier & Co., which was assumed by James D. Partee, the survivor, and secured by said trust deeds mentioned in complainant's bill to F. Barksdale, trustee. Respondent says that at the time of said sale by said Barksdale, trustee, there was due by said James D. Partee, on his own account and his assumption, as survivor, the sum of thirty-three thousand five hundred dollars, to said firm of Nelson, Lamphier & Co., and said sale of said lands and personalty was made by said Barksdale at the instance and request of said firm of Nelson, Lamphier & Co., for the purpose of paying off and discharging said indebtedness. This respondent
234 says that he bid in said property at said sale to secure the debt due by said James D. Partee to said firm of Nelson, Lamphier & Co., and that said sale was made or caused to be made because they believed that it was absolutely necessary to secure their debt. This respondent says that said property, including said lands and personalty, were bought by him for the benefit of his said firm, and that he now holds the same for the use thereof. Respondent says that for said firm he is cultivating said lands, and that after said sale he employed said James D. Partee, at a salary, to manage the same under the control and supervision of him, this respondent, and beyond this said James D. Partee has no right or interest in said property, and that William B. and Sarah D. Partee have no right, benefit, or use of said property whatever.

This respondent having fully answered, prays to be hence dismissed with his reasonable costs, &c.

J. A. P. CAMPBELL,
R. BOWMAN,
Att'ys.

UNITED STATES OF AMERICA,
Southern District of Mississippi, ss:

Before me, R. B. Mayes, a United States commissioner for said
235 district, personally appeared Thomas A. Nelson, the defendant in the foregoing answer, who, on oath, says that the facts set forth and stated therein as of his own knowledge are true, and those stated upon the knowledge and information of others he believes to be true.

T. A. NELSON.

Sworn to and subscribed before me at Yazoo City this 10th day of February, A. D. 1874.

[SEAL.]

R. B. MAYES,
U. S. Commmissioner.

(Endorsed:) Filed February 11, 1874. Geo. T. Swann, cl'k.

And on the 14th day of February, A. D. 1874, the following (four) proofs by defendants were filed in the clerk's office of said court, which are in the words & figures following, to wit:

PROOF BY DEFENDANT.

Declaration.

Circuit court, May term, 1866.

THE STATE OF MISSISSIPPI,
Yazoo County:

Samuel B. Newman, as executor of the last will and testament of Horace F. Walworth, deceased, plaintiff, against William Partee and his wife, Sarah D. Partee, defendants. The plaintiff as executor as aforesaid, by attorney, alleges that heretofore, to wit, on the 19th day of December, 1861, at, to wit, New Orleans, the said Sarah D.
236 Partee, wife of the said William B. Partee, with the authority of law, and the said William B. Partee, with the authority of law, and the said William B. Partee, her husband, made and delivered to Phillip Rotchford, Shepherd Brown, and Joseph H. Johnson, bankers, under the firm name of Rotchford, Brown & Co., her certain promissory note in writing of the date last aforesaid, by which she then and there promised to pay on 15th day of December, 1862, to the order of said Rotchford, Brown & Co., at their counting-house in the city of New Orleans, thirty-eight hundred and thirty-nine $\frac{96}{100}$ dollars, value received, with eight per cent. interest per annum after maturity until paid, and which said note is herewith filed marked "Exhibit A," and made a part of this complaint, and which said note was given by the said Sarah D. Partee with the sanction and authority aforesaid, she being then and there the owner of a farm, lands, hands, stock, and implements in her own right in said State of Mississippi, for money and means for the supply of her plantation aforesaid, and for the maintenance, clothing, care, and support of her slaves, property, interest, and business, and the pur-

chase of property and effects in her name and for the use and
237 support of her estate, and other matters for which by law, with the consent of her husband she could thus contract, and which said note was then and there for a valuable consideration endorsed by said Rotchford, Brown & Co., the payees, and delivered to plaintiffs intestate, Horace F. Walworth, in his lifetime, by means whereof the said note then and there became the property of the said Horace F. Walworth, who since then, to wit, on 1st January, 1864, at, to wit, the State of Louisiana, departed this life fully testate, leaving Samuel B. Newman executor of his last will and testament, and which said will has been duly admitted to probate and record, and letters testamentary thereof granted to Samuel B. Newman at said State of Louisiana, and who brings and files herewith the evidences thereof and his authority to sue in this State under the provisions of Article 131 on page 457 of the revised code of this State, under an act entitled "Of remedies by and against executors and administrators," by means and reason whereof the said defendant became and is liable to pay said plaintiff as executor as aforesaid the said note and interest thereon. That said note wholly remains due and unpaid, and plaintiffs aforesaid, by attorney, says that
defendants on 15th December, 1862, at said county and State, was
238 indebted to plaintiff, as executor as aforesaid, in the further sum of $3,889.96, for money loaned and advanced, and in the like further sum of $3,889.96, for so much money before that time had and received, and in the like further sum of $3,889.96, for so much money laid out and expended, and in the like further sum for goods, wares, and merchandise sold and delivered, and for the like further sum upon an account stated, and in the like further sum upon a quantum-meruit account, and in a like further sum upon a quantum-valebant account, and in a like further sum for work and labor; which said several sums the said defendants promised to pay whensoever thereunto afterwards requested; yet to pay the same, or any part of either, although often requested so to do, have wholly failed and refused, and still fail and refuse, wherefore plaintiff, as executor as aforesaid, sues and demands judgment against defendants for the amount of said note, the interest thereon, and cost of suit.

HUDSON & NYE,
Attys' P. Cl.

Copy of note.—Exhibit A.

$3.889.96. | NEW ORLEANS, *December* 19, 1861.

On the fifteenth December, 1862, after date, I promise to pay to
239 the order of Rotchford, Brown & Co., at their counting-house, in this city, thirty-eight hundred and eighty-nine $\frac{96}{100}$ dollars, value received, with eight p. cent. per annum interest after maturity until paid.

SARAH D. PARTEE.

Authorized by me.

W. B. PARTEE.

(Endorsed:) No. 4029. Salartia. Exhibit A. Rotchford, Brown & Co. 18270. Filed Nov. 11, 1864. C. F. Perrux.

Pleas.

SAMUEL B. NEWMAN, EXECUTOR, &C.,
vs.
WM B. PARTEE AND SARAH D. PARTEE, HIS wife.

And the said defendants, by their attorneys, come and defend the wrong and injury when, &c., and say that they did not undertake and promise in manner and form as said plaintiff hath in and by his said declaration above thereof complained against them; and of this they put themselves on the country.

WILKINSON & BOWMAN,
Attorneys for Def'ts.

S. B. NEWMAN, PL'FF,
vs.
W. B. & SARAH D. PARTEE, DEF'TS. } 265.

And the said defendants, by their attorneys, come and defend
240 the wrong and injury when, &c., and say that they did not undertake and promise in manner and form as said plaintiff hath above thereof in and by his said declaration complained against them; and of this they put themselves on the country.

WILKINSON & BOWMAN,
Attorneys, &c.

Filed May 27, 1867.

G. A. GIBBS, *Clk.*
By E. DRENNING, *D. C.*

Plaintiffs will take notice that defendants on the trial of this case will offer in evidence a deed of assignment and trust made on the day of , 1866, by defendants to secure the payment of the claim sued on by said plaintiff, and that the said plaintiff afterwards, to wit, on the day of , 1867, accepted the same in satisfaction thereof.

PARTEE,
By W. & B.

Circuit court Yazoo Co., May term, 1868—June 8, 1868.

SAMUEL B. NEWMAN, EXECUTOR,
vs.
WILLIAM B. PARTEE AND SARAH D. PARTEE, his wife. } I. 55.

This day came the parties, by attorney; and, issue being joined, it is ordered by the court that a jury come; whereupon came M. R. Mobley and eleven others, who, being duly elected, tried, and sworn to
241 try the issue joined, upon their oath say: We, the jury, find for plaintiff and assess his damages to the sum of ($5,594.30) five thousand five hundred and ninety-four and $\frac{30}{100}$ dollars.

Whereupon it is considered by the court that plaintiff recover of defendants, William B. Partee and Sarah D. Partee, his wife, the sum so assessed by the jury, and also his costs in this behalf expended.

J. A. P. CAMPBELL,
Judge.

STATE OF MISSISSIPPI,
Yazoo Co.:

I, W. H. Foote, cl'k of the circuit court in and for said county, do hereby certify that the above and foregoing pages contain a true and correct transcript of the declaration, note, pleas, and judgment in the above-stated case as the same appears of record and on file in my office.

Given under my hand and seal of office this 12th day of Febr'y, 1874.

[SEAL.]

W. H. FOOTE, *Clk*,
Per R. D. SMITH, *D. C.*

(Endorsed:) Filed 14 Febr'y, 1874. Geo. T. Swann, cl'k.

(Indorsed on margin:) Complaint & note filed May 1st, 1866.
G. A. GIBBS, *Clk.*,
By E. DRENNING, *D. C.*

(Endorsement on declaration:) I. 56. Samuel B. Newman, ex'r of Horace F. Walworth, dec'd, vs. Sarah D. Partee & William B. Partee. Declaration.

PROOF BY DEFENDANT.

Declaration.

Circuit court, November term, 1866.

STATE OF MISSISSIPPI,
Yazoo County:

242 The suit of Jonathan Montgomery, plaintiff, against William B. Partee and his wife, Sarah D. Partee, defendants.

The said plaintiff, by his attorneys, represent that at New Orleans, on the 4th day of February, 1861, the said Sarah D. Partee, wife of the said William B. Partee, with the authority of law, and the said William B. Partee, her husband, made and delivered to S. O. Nelson & Co., merchants and partners in trade under the firm-name of S. O. Nelson & Co., which firm was composed of Samuel O. Nelson, Thomas O. Nelson, and Henry C. Walker, her certain promissory note in writing, of the date last aforesaid, by which she then and there promised to pay, on the twenty-second day of February, 1862, to the order of S. O. Nelson & Co., at their counting-house in the city of New Orleans, five thousand dollars, for value received, bearing interest at the rate of eight per cent. per annum after maturity until paid, and a copy of which said note is herewith filed, marked "Exhibit A" (the original will be produced on the trial) and made part of the complaint, and which said note was given by the said Sarah D. Partee with the sanction and authority aforesaid, she being then and there the owner of a plantation, lands, slaves, hands, stock, and implements, in her own
243 right, in said State of Mississippi, for money and means for the supply of her plantation aforesaid, and for the maintenance, clothing, care, and support of her slaves, property, interest, and business, and the purchase of property and effects in her name and for the use and support of her estate and other matters for which by law, with the consent of her husband, she could thus contract, and which said note was then and there wholly unpaid, transferred by the endorsement of the said payees, S. O. Nelson & Co., for a valuable consideration

by writing their firm-name on the back thereof, and delivered the same to said plaintiff, who then and there became and is the legal holder and owner thereof, and entitled to the proceeds of the same; by means and reasons whereof said defendants became and are liable as aforesaid to pay the same to said plaintiffs, the said note being whole due and unpaid.

And the plaintiffs aforesaid by his attorneys, says that defendants on, to wit, the 22d of February, 1862, at, to wit, said county and State, was indebted to said plaintiffs in the further sum of five thousand dollars for money loaned and advanced, and in the like further sum for so much money had and received, and also, in the like further sum for so much money laid out and expended, and also in the like further sum for goods,
244 wares, and merchandise sold and delivered, also in the like further sum upon an account stated, and also in the like further sum for work and labor, and also in the like further sum upon a quantum valebant account, and also in the like further sum upon a quantum meruit account, and which said several sums defendants promised to pay whensoever thereunto afterwards requested, yet to pay the same or either, although often requested so to do, have failed and refused, and still fail and refuse, wherefore plaintiff sues and demands judgment against said defendants for the amount of said note, with interest thereon and cost of suit.

HUDSON & NYE,
Att'ys for Pl'ff.

Copy of note.—Exhibit A.

$5,600.00.] NEW ORLEANS, *February 4th*, 1861.

On the twenty-second day of February, 1862, I promise to pay to the order of S. O. Nelson & Co., at their counting house in the city of New Orleans, five thousand dollars for value received, bearing interest at the rate of eight per cent. per annum after maturity until paid.

SARAH D. PARTEE.

Authorized by me.

W. B. PARTEE.

245 Endorsed by S. O. Nelson & Co. with demand, protest, and notice of protest waived. 25 Feb'y, 1862.

Yazoo circuit court. May term, 1868. June 8, 1868.

Copy of judgment.

JONATHAN MONTGOMERY
vs.
WILLIAM B. PARTEE AND SARAH D. PARTEE, his wife. } I. 113.

This day came the parties by attorney, and issues being joined, it is ordered by the court that a jury come. Whereupon came John P. Wilson and eleven others, who, being duly elected, tried, and sworn to try the issue joined, upon their oath, do say, we, the jury, find for the plaintiff, and assess his damages at the sum of $7,511.00 (seven thousand five hundred and eleven dollars). Whereupon it is considered by the court that plaintiff recover of defendants, William B. Partee and

Sarah D. Partee, his wife, the sum so assessed by the jury, and also his costs in this behalf expended.

J. A. P. CAMPBELL, *Judge.*

STATE OF MISSISSIPPI,
Yazoo County:

I, W. H. Foote, cl'k of the circuit court in and for said county,
246 do hereby certify that the above and foregoing pages contain a true and correct transcript of the declaration, note, and judgment of court, as the same appears of record and on file in my office in the above-stated case.

Given under my hand and seal of office this 12th day of Feb'y, A. D. 1874.

[SEAL.]

W. H. FOOTE, *Clk,*
Per R. D. SMITH, *D. C.*

(Endorsed:) Filed February 14, 1874. Geo. T. Swann, cl'k.

(Endorsement on declaration:) No plea. Jan'y 20, '68. Filed Nov. 17, 1866. G. A. Gibbs, cl'k, by E. Dremmig, D. C. Jonathan Montgomery vs. Sarah D. Partee & W'm D. Partee, compl't. Yazoo circuit court. November term, 1866.

Proof by defendant.

Yazoo circuit court, May term, 1866.

STATE OF MISSISSIPPI,
Yazoo County:

RICHARD A. BARCLEY, PLAINTIFF,
vs.
WILLIAM B. PARTEE AND SARAH D. PARTEE, his wife.

Said plaintiff alleges that on the 6th day of December, 1862, at "No Mistake" plantation in said county, said defendant William B. Partee made and executed his promissory note in writing, and thereby then and there promised to pay, on the first day of January, 1863, to said plaintiff, by the name of R. A. Barkley, or order, twelve hundred
247 and forty-seven dollars and sixteen cents, being balances due him for wages as manager on this plantation, meaning thereby said "No Mistake" plantation. Said note is filed herewith, marked "A," and part hereof.

And said plaintiff avers that said "No Mistake" plantation and the slaves thereon were the property of said defendant Sarah D. Partee, and that plaintiff was employed by said defendants to manage said property as overseer, and did so manage it, and that said promissory note was given for a balance of wages due to him for his wages as such overseer; by means whereof defendants became liable to pay to said plaintiff the sum of money in said promissory note specified according to the tenor and effect thereof. And being so liable, said defendants, in consideration thereof, afterwards, to wit, on the day and year aforesaid, at the county aforesaid, promised said plaintiff to pay him the said sums of money in the said note specified, according to the tenor and effect thereof. And plaintiff further avers that on the 6th day of December, 1866, said defendants were indebted to him in the sum of twelve hundred and forty-seven dollars and sixteen cents, a balance of wages

due to him for services before that time mentioned by him as
248 manager and overseer for them on the "No Mistake" plantation in said county, by their employment and at their request; said plantation and the slaves thereon being then the property of said defendant Sarah D. Partee, and that in consideration thereof, said defendant William B. Partee, on said 6th day of December, 1862, at said plantation in the county aforesaid, made his certain other promissory note, and thereby promised to pay, on the first day of January, 1863, to said plaintiff, by the name of R. A. Barkley, or order, twelve hundred and forty dollars and sixteen cents, being balance due him for wages as manager on the plantation, meaning thereby said "No Mistake" plantation. Said promissory note is filed herewith, marked "A," and made part hereof. And said plaintiff avers that said defendants, though often requested, have wholly failed to pay the said several sums of money or any part thereof; but to pay the same or any part thereof said defendants have hitherto wholly failed and refused, and still do so refuse.

The relief demanded is a judgment against defendants for the amount due on said promissory note and the costs of this suit.

R. S. HOLT, *Att'y.*

249 $1,247.16.] NO MISTAKE PLANTATION, *Dec'r*, 1862.

On the first day of January, 1863 (eighteen hundred & sixty-three), I promise to pay R. A. Barkley, or order, twelve hundred and forty-seven $\frac{16}{100}$ dollars, being balance due him for wages as manager on the plantation.

W. B. PARTEE.

(Endorsed on the note:)

March, 1863.

Cr. by 50 b's corn, at 1$	$50 00
June, 1863.	
Cr. by 100$ in Confederate	100 00
Cr. by	50 00
	$200 00

50 per ct. dis.

W'M B. PARTEE & WIFE
als.
R. A. BARKLEY.

Said defendants, by their attorneys, come and defend, &c., and say that they did not undertake and promise in manner and form as said plaintiff in and by his said declaration hath above thereof complained against them, and of this they put themselves on the county.

WILKINSON & BOWMAN,
Attors, &c.

250 RICHARD BARKLEY
vs.
W. B. PARTEE AND SARAH D. PARTEE, HIS wife.

And said defendants, by their attorneys, &c., &c., defend, &c., and for answer to said plaintiff's declaration say that they did not under-

take and promise in manner and form as said plaintiff hath in and by his said declaration complained; of this they put themselves on the county.

WILKINSON & B., *Att'ys.*

And for a further plea, said defendants say actio non, because they say that on, to wit, the day of 1861, they paid to said plaintiff the sum of five hundred and ten dollars, an account of which is herewith filed (Exhibit 1), and this they are ready to verify; wherefore.

W. & B., *Att'r's.*

Richard Barkley to Sarah D. Partee.

1866.

To rent of 30 acres of land, and houses, @ 7	210
" this am't cash p'd you on farm	150
" 100 bu. corn, @ 1.50	150
	$510

Yazoo circuit court, May term, 1867. May 29th, 1867.

STATE OF MISSISSIPPI,
Yazoo County:

251 *Copy of judgment.*

R. A. BARKLEY
vs.
WILLIAM P. PARTEE AND SARAH D. PARTEE. } I. 49.

This day came the parties by attorney, and issue being joined, it is ordered by the court that a jury come; whereupon came S. T. Massey and eleven others, who being duly elected, tried and sworn to try the issue joined, upon their oath do say: We, the jury, find for the plaintiff and assess his damages to the sum of $1,460.00 (fourteen hundred and sixty dollars and $\frac{00}{100}$); whereupon it is considered by the court that plaintiff recover of defendants the sum so assessed by the jury, and also his costs in this behalf expended.

J. A. P. CAMPBELL, *Judge.*

STATE OF MISS.,
Yazoo Co.:

I, W. H. Foote, cl'k of the circuit court in and for said county, do hereby certify that the above and foregoing pages contain a true and correct transcript, of the declaration, note, pleas and judgment of court, in the above stated case, as the same appears of record and on file in my office.

252 Given under my hand and seal of office, this 12th day of Febr'y, 1874

[SEAL.]

W. H. FOOTE, *Clk,*
Per R. D. SMITH, *D. C.*

(Endorsed:) Filed Febr'y 14, 1874. Geo. T. Swann, cl'k.

(Endorsement on declaration:) Yazoo circuit court, May term, 1866. R. A. Barkley vs. W. B. Partee et al. Filed Mar. 2, 1866. G. A. Gibbs, cl'k, by E. Drenning, D. C.

PROOF BY DEFENDANT.

Copy of declaration.

Circuit court, May term, 1866.

STATE OF MISSISSIPPI,
Yazoo County:

WILLIAM SILLMAN, PLAINTIFF,
against
WILLIAM B. PARTEE AND HIS WIFE, SARAH D. Pardee, defendants.

The plaintiff, by attorney, alleges that heretofore, to wit, on the 4th day of February, 1861, at, to wit, New Orleans, the said Sarah D. Partee, wife of the said William B. Partee, with the authority of law and the said William B. Partee, her husband, made and delivered to S. O. Nelson & Co., merchants and partners in trade under the firm name of S. O. Nelson & Co., otherwise written Samuel O. Nelson, Thomas A. Nelson & Henry C. Walker, her certain promissory note in writing of the date last aforesaid, by which she then and there promised to pay on the tenth day of February, 1862, to the order of S. O. Nelson & Co., at their counting-house in the city of New Orleans, twenty-five hun-
253 dred dollars for value received, bearing interest at the rate of eight per cent. per annum after maturity until paid, and which said note is herewith filed, marked "Exhibit A," and made part of this complaint, and which said note was given by the said Sarah D. Partee with the sanction and authority aforesaid, she being then and there the owner of a farm, lands, slaves, hands, stock and implements in her own right in said State of Mississippi, for money and means for the supply of her plantation aforesaid and for the maintenance, clothing, care and support of her slaves, property, interest and business, and the purchase of property and effects in her name, and for the use and support of her estate and other matters, for which, by and with the consent of her husband, she could then contract, and which said note was then and there wholly unpaid, transferred by the endorsement of the payees, S. O. Nelson & Co., for a valuable consideration, by writing their firm's name across the back thereof, and delivered the same to plaintiff, who then and there became and is the legal holder and owner thereof, and entitled to the proceeds of the same, by means and reason whereof said defendants became and are liable as aforesaid to pay the same to plaintiff, the said note being wholly due and unpaid.

254 And plaintiff aforesaid, by attorney, says that defendants, on, to wit, 10th February, 1862, at, to wit, said county and State, was indebted to plaintiff in the further sum of $2,500 for money loaned and advanced, and in the like further sum for so much money had and received, and also in the like further sum for so much money laid out and expended, and also in the like further sum for goods, wares and merchandise sold and delivered, also in the like further sum upon an account stated, and also in the like further sum for work and labor, and also in the like further sum upon a quantum meruitt account, and also in the like further sum upon a quantum valebant account, and which said several sums defendant promised to pay whenever thereunto afterwards requested; yet to pay the same or either, although often requested so to do, have failed and refused and still fail and refuse, wherefore

plaintiff sues and demands judgment against defendants for the amount of said note with the interest thereon and cost of suit.

HUDSON & NYE.
Att'ys P. Q.

$2,500. NEW ORLEANS, *February* 4, 1861.

On the tenth of February, 1862, I promise to pay to the order
255 of S. O. Nelson & Co., at their counting-house in the city of New Orleans, twenty-five hundred dollars for value received, bearing interest at the rate of eight per cent. per annum after maturity until paid.

SARAH D. PARTEE.

Authorized by me.

W. B. PARTEE.

(Endorsed:) S. O. Nelson & Co., W'm Silliman.

STATE OF LOUISIANA:

By this public instrument of protest, be it known that on this thirteenth day of February, in the year one thousand eight hundred and sixty-two, at the request of the cashier of, and holder for, the branch of the Louisiana State Bank, second municipality of the original note, whereof a true copy is on the reverse hereof written, I, Edward Gottschalk, a notary public, dwelling in the city of New Orleans, duly commissioned and sworn, demanded payment for said note at the counting-house of S. O. Nelson & Co., where the same is made payable, and was answered by M'r S. O. Nelson, copartner of said firm, to whom I presented said note, that no funds had been provided there to pay
256 the same, whereupon I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the drawer or maker of the said note as against all others whom it doth or may concern, for all exchange, re-exchange, damages, costs, charges, and interests, suffered or to be suffered for want of payment of the said note.

Thus done and protested in the presence of Selim Wagner and James Fahoy, witnesses.

In testimony whereof I grant these under my signature and the impress of my seal of office, at the city of New Orleans, on the day and year first above written.

G. E. GOTTSCHALK,
Notary Public.

And the said defendant, Sarah D. Partee, says she did not promise in manner & form as the said plaintiff hereunto complains, and of this she puts herself upon the country.

WILKINSON & BOWMAN.

STATE OF MISSISSIPPI,
Yazoo County:
Circuit court, June term, 1868. June 8th, 1868.

257 WILLIAM SILLMAN
vs.
WILLIAM B. PARTEE AND SARAH D. PARTEE, his wife. } I. 48.

This day came the parties by attorneys, and issue being joined, it is ordered by the court that a jury come; whereupon came John P. Wilson and eleven others, who, being duly elected, tried, and sworn to try the issue joined, upon their oath do say, "We, the jury, find for the plaintiff, and assess his damages to the sum of $3,765.00 (three thousand seven hundred and sixty-five dollars)." Whereupon it is considered by the court that the plaintiff recover of William B. Partee and Sarah D. Partee, his wife, the sum so assessed by the jury, and also his costs in this behalf expended.

J. A. P. CAMPBELL, *Judge.*

STATE OF MISS.,
Yazoo County:

I, W. H. Foote, clerk of the circuit court in and for said county, do hereby certify that the above and foregoing pages contain a true and correct transcript of the declaration, note, pleas, and judgment of court in the above-stated case, as the same appears of record and on file in my office.

258 Given under my hand and seal of office this 12th day of Febr'y, 1874.

[SEAL.]

W. H. FOOTE, *Clk,*
Per R. D. SMITH, *D. C.*

(Endorsed:) Filed February 14, 1874. Geo. T. Swann, cl'k.

(Endorsement on declaration:) William Silliman vs. Sarah D. Partee & W'm B. Partee. Declaration. Complain't' note filed Ap'l 28, 1866. G. A. Gibbs, cl'k.

And afterwards, to wit, on the 27 day of February, A. D. 1874, the answer of W. B. Partee was filed in the clerk's office of said court, which is in the words & figures following, to wit:

Answer of W. B. Partee.

To the honorable the judge of the circuit court of the United States for the southern district of Mississippi, sitting in equity:

The answer of W. B. Partee to a bill of complaint exhibited against him and others in this honorable court by the Canal Bank of Louisiana:

This respondent, saving and reserving to himself all manner of exceptions to the manifold errors and misstatements in said bill of complaint contained, for answer thereto, or so much thereof as he is advised is material for him to answer, answering says, that he denies that he and Sarah D. Partee were indebted to complainants on the 19th
259 of November, 1866, as charged in said bill, but admits that on that day the said Sarah D. Partee, his wife, who was the owner of separate property, was indebted to complainants as follows, to wit: to said Marsh, Denman & Bedault in the sum of five thousand dollars, due Feb'y 18th, 1862, and the sum of four thousand dollars due May 13, 1862; to the said Crescent City Bank the sum of four thousand dollars, due March 27th, 1862; to the said Bank of Louisiana the sum of four thousand dollars, due December 23d, 1861. The said indebtedness

was evidenced by the promissory notes of said Sarah D. Partee authorized by W. B. Partee, all payable to S. O. Nelson & Co., and by the latter endorsed in blank and held by said parties complainant respectively as aforesaid. This respondent says that said Sarah D. Partee, at the date aforesaid, was also indebted to said complainants in manner as follows: To the Canal or Canal & Banking Company of New Orleans in the sum of five thousand dollars, due January 27, 1862, and also the further sum of five thousand dollars, due January 21st, 1862; to the Union Bank of Louisiana the sum of four thousand four hundred and fifteen dollars, due February , 1862; to E. Dupassier & Co.
260 the sum of $2,850, due 11th December, 1862, and also the sum of four thousand three hundred and forty-nine dollars, due Jan'y 23d, 1862. All of said last-named indebtedness was evidenced by the promissory notes of said Sarah D. Partee, authorized by W. B. Partee, payable respectively to Rotchford, Brown & Co., and by them endorsed. This respondent says that said promissory notes hereinbefore named, as well as the other indebtedness of said Sarah D. Partee at the time, are set forth and contained in the trust deed marked "Exhibit A" to complainant's bill, and to which reference is hereby specially made.

This respondent, further answering, says that at the time said original notes and debts in said trust-deed were created, that the said Sarah D. Partee in her own separate right was the owner of a very large and valuable property, consisting in part of several plantations on the Yazoo River in said district, and about two hundred slaves, and also a valuable plantation on Red River in Louisiana, the income of which was sufficient to meet or at least control said indebtedness, but by the result of the war, the destruction of her cotton crops on hand at its commence-
261 ment, the loss of her mules and other personalty at the close of the late war between the Southern States and the United States, that she was unable to meet said liabilities which are mentioned in said trust-deed. This respondent says that in the year 1866 that some of the creditors of said Sarah D. Partee became pressing for their debts, and this respondent, acting for his said wife, Sarah D. Partee, conferred with other of said creditors and his friends, who advised a composition or compromise of all of her said indebtedness, and this respondent acting upon said advise and with the view to secure all alike and to induce all to accept of terms of settlement, made and executed with his wife, the said Sarah D. Partee, bona fide, said trust deed marked "Exhibit A" to complainant's bill.

This respondent, further answering, says that at and before the time said trust-deed was executed, some of the creditors of his wife, the said Sarah D., had verbally signified or mentioned to him that they would be willing to accept the terms of composition for her debts named therein, and for these reasons this respondent and his said wife made and executed said trust-deed, with Robert Bowman as trustee.

262 This respondent, further answering, says that with this view and purpose, and to put all the creditors of said Sarah D. Partee on an equal footing, and to secure all alike as far as possible, this respondent and his wife employed said Robert Bowman, of the law firm of Wilkinson & Bowman, to draft said trust-deed, and who at their request consented to act as trustee. Respondent denies, however, that the whole labor and settlement of conducting the settlement under said trust-deed was performed by said Robert Bowman. This respondent says that he believes it to be true that a letter was written said Robert Bowman, of the firm of Wilkinson & Bowman, in their firm-name, to the tenor and effect as set forth in Exhibit B to complainants' bill, but

whether said copy is a true copy of said letter this respondent neither admits nor denies, and if to be effected thereby, demands strict proof. Admits the statement in the original proposition to the attorneys of complainants in New Orleans, as set forth in Exhibit C to said bill.

Respondent, further answering, says that early in January, 1867, he met said Robert Bowman in the city of New Orleans, and at the request of this respondent he called with him on said attorneys in New Orleans, and the said Bowman then stated to said attorneys the
263 importance and necessity of the creditors' accepting said trust-deed in writing within the time prescribed, and also, if they did accept, that arrangements should be made for the payment of taxes on said lands in Tallahatchie and Sunflower Counties. The attorney of said complainants, M'r Hyams, of the firm of Hyams & Jonas, stated that he would get such acceptance in writing if the creditors would agree, and give notice thereof or send the same to said Bowman. This respondent says, that as far as he knows or believes and is informed, such notice of acceptance was never made by said attorney or any one else to said Bowman, and this respondent says that, as far as he knows or believes, the said Robert Bowman, except as aforesaid, never performed any labor or service in inducing a settlement under said trust-deed.

This respondent further answering says, that although said alleged novated notes bear date the 19th of November, 1866, yet in fact and in truth they were not actually made or delivered on that day. This respondent says that after the day said trust-deed was executed, the said Sarah D. Partee and this respondent signed new or novated notes, payable to all the creditors named in said deed, most of whom resided
264 in the State of Louisiana, and this respondent carried said new notes of the creditors in Louisiana, as well as said trust-deed, to complainants' attorney, M'r Hyams, of the city of New Orleans, and employed him to effect a compromise of said debts named in said trust-deed according to the terms thereof, and delivered the said new notes and trust deed to the said attorney of complainants, who undertook to bring about and effect said settlement. Respondent knew that said complainants' attorney, as such, controlled or had for collection a considerable amount of the claims of the creditors of said Sarah D. Partee, and, as he now remembers and believes, particularly the claims of all the complainants.

This respondent, further answering, says that said attorney of complainants, from the time said new notes were put in his hands, which was about some time in , 1866, or early in 1867, up to January 28th, 1868, that said complainants as well as other creditors he thought would accept a settlement upon the terms of said deed, but there was in fact no definite or positive acceptance by said complainants, either verbally or in writing, until the date of said receipt, and said receipt was
265 the only acceptance made, and this respondent submits to this court whether that constituted an acceptance of said trust-deed.

This respondent, further answering, says that, pending the negotiation for the settlement of said debts due by said Sarah D. Partee, the said complainants, the said Crescent City Bank, in the year 1867 brought a suit on the original promissory note mentioned in said trust-deed and recovered judgment thereon, in the circuit court of Yazoo County, Mississippi, on the 11th of June, 1868, for the sum of five thousand nine hundred and ninety-one $\frac{95}{100}$ dollars.

Respondent, further answering, says that said complainant, the Canal Bank, by the name and style of the New Orleans Canal Banking Com-

pany, likewise brought suit on said note due 27th of January, 1862, in said circuit court of Yazoo County, and recovered judgment thereon against said Sarah D. Partee on the 11th of June, 1868, for the sum of seven thousand five hundred and forty-eight $\frac{88}{100}$ dollars.

Respondent, further answering, says that many other creditors in said trust-deed mentioned also brought their suits on their original claims in said circuit court, among whom were R. A. Barkley, W'm Silli-
266 man, S. B. Newman, W'm J. McLean, Jonathan Montgomery, John A. Miller, and Charles E. Altor: this respondent says that he admits that he signed said receipt filed as Exhibit D to complainants' bill.

This respondent, further answering, says that of said original notes and claims mentioned in said trust-deed there was only returned to this respondent or his wife, the said Sarah D. Partee, the note due the Louisiana State Bank, the notes due Edward Dupassier, the note of Canal Bank of Louisiana, or New Orleans Canal Banking Company, due 21st January, 1862, the notes due Connor & Co., and the note due Stark, Stauffer & Co., and, perhaps, that of McStea, Value & Co.

This respondent, further answering, says that on said original note due the Canal Bank on the 27th of January, 1862, a copy thereof was delivered to this respondent, upon which was endorsed, as respondent believes, in the handwrite' of M'r Hyams, the attorney of complainants, "Original in hands of Miles & Epperson"; this respondent says that Miles & Epperson were attorneys of Yazoo City, Mississippi, who brought suit on said original note and prosecuted the same to judgment, as aforesaid. Said copy so delivered to this respondent with the
267 endorsements thereon is herewith filed as Exhibit 1 to this answer and made part hereof.

This respondent, further answering, says that he denies that either he or the said Sarah D. Partee ever received or that there was ever surrendered to him or the said Sarah D. Partee said original note due to the Union Bank of Louisiana or the original note due to I. Marsh, Denman & Co., or the original note due to Canal Bank on 27th January, 1862, or said original note due to Crescent City Bank. This respondent says that this allegation of said complainants is a mere pretence and falsehood.

This respondent, further answering, says that at the time he signed said receipt marked "Exhibit D" it was at the suggestion and upon the request of M'r Hyams, who had been acting as his attorney in effecting a settlement under said trust-deed. Respondent admits the suit of Stuart, and that Wilkinson & Bowman were his attorneys, the return upon the process, and the judgment in his (Stuart's) favor, as charged in said bill; admits the release of errors, as charged, but says it was not pretended but intended to be bona fide; admits that this respondent and his wife prosecuted a writ of error to the high court of errors and appeals.

268 This respondent, further answering, says that his chief and principal reason for prosecuting said writ of error was for delay, and for the purpose of reversing said judgment in favor of said Stuart, if there was legal ground for reversal; denies that said writ of error or said suit was dismissed by this respondent or his wife, said Sarah D. Partee, or by procurement of themselves and said Robert Bowman, fraudulently intending to hinder, defeat, and delay said complainants. This respondent says that this allegation is wholly false and unfounded in truth or fact. Respondent says that he, acting for his wife, employed an attorney of well-known integrity, M'r J. C. Prewitt, of Yazoo City,

to prosecute said writ of error from said judgment, the object being chiefly, as before stated, for delay, but with the expectation that, perhaps, said judgment might be reversed. Respondent says that he relied fully on his said attorney, and confided in him to manage said case in said high court as he thought most advisable.

Respondent, further answering, says that he is informed and believes, and so says, that said release of errors was pleaded in said high court of errors and appeals by said Stuart, and said judgment of said cir-
269 cuit court of Yazoo County was affirmed, and that neither said writ of error or said suit was dismissed by said high court of errors and appeals; denies that said suit or writ of error by this respondent and his wife was a mere trick or device to consummate a fraudulent purpose to defeat said trust-deed under complainants' claims.

Respondent neither admits nor denies that said judgment in favor of Stuart against himself and wife was void, and as the grounds alleged in said bill for said judgement being void are simply questions of law and not of fact, this respondent submits the same to this honorable court as if he had specially demurred to that part of said bill, which sets up matters of law in avoidance of said judgment.

This respondent further answering says, that in January, 1867, an execution issued in favor of said Stuart, on said judgment, against said Sarah D. Partee, which was levied on said lands in said bill and trust deed mentioned; and this respondent and his wife, Sarah D. Partee, for the purpose of getting time and with the hope of paying said judgment in the following fall, agreed to release all errors (if any therein) provided the
270 said Stuart would stay the enforcement of said execution, and not have the property levied on sold until the following fall or until the 1st of January following. Respondent says that this agreement to stay said execution was not in writing and was conditioned upon the rights of said Stuart not being impaired or effected by any subsequent judgment creditor making a levy. This extension of sale or enforcement of said execution was the consideration of and the reason of said release of errors.

This respondent, further answering, says that he submits to this court whether said release of errors is valid or in proper form. This respondent further says that he is informed and believes, and so says, that said release of errors was pleaded to said writ of error in said high court of errors and appeals, and said judgment in favor of Stuart was affirmed upon said plea. This respondent says that he does not know at whose instance or direction said execution was issued, or at whose instance said vendi. was issued, or of the return thereon, except as appears by Exhibit F to said bill.

This respondent, further answering, says that as to the sufficience of said return on said writs, that he is advised that it is a mere ques-
271 tion of law, and he submits the same to this court as if he had specially demurred to that part of said bill of *said* complainants *bill.*

This respondent, further answering, says that he is informed and believes that at the time of the levy of said execution and the sale under said writ of vendi. that the said John T. Heth was the deputy of said S. M. Dyer, sheriff of said county of Yazoo. Respondent says that said Heth was at said times acting as deputy sheriff under the sanction and approval of said Dyer.

This respondent, further answering, says that notwithstanding said writ of venditio' exponas was returned, that the lands therein named were sold on the 5th of January, 1869, and notwithstanding said deed

to said Stuart recites that the lands conveyed to him were sold on the said 5th day of January, 1869, yet this respondent says that in fact and in truth said lands bought by said James D. Partee and said Stuart were sold under said writ of venditioni exponas on the 4th of January, 1869, being the first Monday of that month and a regular sale day, and that said lands were sold upon due notice and advertisement as prescribed by law.

272 This respondent, further answering, says that he does not know at whose instance or direction said execution or said writ of venditioni exponas issued.

This respondent, further answering, says that he is advised and believes that said sale was not void as charged by said complainants. Respondent denies that said James D. Partee was not present at said sale of said lands under said writ of venditioni exponas. Denies that no part of the purchase money of said lands was paid; denies absolutely and positively that said sale was consummated upon the agreement between this respondent, R. Bowman, and James D. Partee, that part of said lands should be bid in by said Stuart for his debt, and that the residue should be bid in by James D. Partee; denies that there was any such agreement that this respondent and James D. Partee should pay the fees of Robert Bowman; denies that this respondent or said James D. Partee ever paid one cent of the fees of said Bowman as attorney of said Stuart or for any matter or thing done by him under said judgment of said Stuart in connection with the sale of said lands. This respondent denies that either he or his wife, the said Sarah D. Partee,

273 had any personalty, as charged in said bill, out of which said judgment could have been made, either at the time of the levy of said execution or at the time of the sale under said writ of venditioni exponas. Respondent denies that said Robert Bowman was the attorney of himself, this respondent, and said Sarah D. Partee in any of the matters complained of in said bill, except as aforesaid.

This respondent, further answering, says that said complainants, from the fact of their bringing the suits aforesaid on their original claims and from the fact of their failing to give said trustee notice, either verbally or in writing, of their acceptance of the provisions of said trust deed, and from their whole conduct in the transaction under said trust deed as before stated, did not rely on said Bowman to protect their interest, and this allegation is simply unfounded and untrue as this respondent believes.

This respondent, further answering, says that said complainants or their attorney knew full well of said judgment of James Stuart as early as the latter part of the year 1866, as well also as a lien in favor of Christopher Todd, both of which had priority and preference over said trust-deed.

274 This fact was communicated to them or their attorney, both by this respondent and said Bowman, yet said complainants, as far as this respondent knows or believes, never offered to pay the same and never called on said trustee to act as such, and never gave him any notice of their acceptance of said trust-deed, but on the contrary, some of them by employing local attorneys to bring suit on their original claims, thus plainly signified their abnegation of said trust-deed.

This respondent, further answering, says that said levy of said execution on said lands in Yazoo County, the writ of error, the writ of venditioni exponas, the sale of said lands in accordance with legal advertisement, were all facts of which the attorneys of said complainant ought and should have taken notice of. Respondent denies that the debt or claim upon which the judgment of said James Stuart was based was

provided for in said trust-deed, but on the contrary this respondent says that the said Stuart expressly refused to have his claim included in said trust-deed or to accept the provisions thereof. Admits the Yazoo lands were the only property of appreciable value as the result has turned. Respondent knows nothing of the correspondence between complainants' attorneys and R. Bowman as to sale of said lands as charged in said
275 bill, and if to be effected thereby demands strict proof. Respondent denies that complainants accepted said new notes, except as aforesaid. Denies that said complainants were reposing with confidence on this respondent. Denies that he, this respondent, had anything to do with, or had in any manner any direction, control, or management of said sale under said Stuart judgment, but on the contrary, this respondent says that he had used all the law's delays existing at the time to postpone said sale, with the hope and expectation of paying off said judgment, and with the view that the creditors named in said trust-deed would all accept the same.

This respondent, further answering, says that at the time said trust was executed the said lands in Yazoo County, at the then market value, were worth from forty to fifty thousand dollars. There had been on the said lands about fifteen acres of said land cleared. In all, there was between four and five thousand acres. This respondent says that by reason of the disastrous seasons of 1866 and 1867 for cotton crops, and the unprecedented overflow of 1867, which submerged the highest lands in the Yazoo Valley, and the demoralization of labor from the causes
276 aforesaid, that Yazoo Valley lands were very greatly reduced and depreciated in value at the time of said sale. Denies as positively and absolutely false and untrue that the sum of $5,750 00, or any other sum, was fixed by agreement to be bid for said lands. Denies that said sale was in consummation to hinder and delay complainants. Respondent again denies that he had anything to do with the control, direction, or management of said sale. Denies that no money was paid for the purchase of said lands. Admits the trust-deeds by James D. Partee to Nelson, Lamphier & Co. This respondent denies that any part or portion of the consideration of said trust-deed was for any indebtedness of this respondent and his wife, Sarah D. Partee, or either of them. Respondent knows nothing of any understanding between said James D. Partee and Nelson, Lamphier & Co., as to the effect or operation of said sale by F. Barksdale, trustee, and if any such agreement or understanding existed this respondent knows nothing of it.

This respondent, further answering, says that from the time of the sale of said lands as charged in said bill, neither this respondent or his wife, the said Sarah D. Partee, have been in possession thereof, nor have
277 they or either of them ever received any rents, use, receipts, or profits thereof.

This respondent, further answering, says that he does not know the amount of indebtedness of said James D. Partee to Nelson, Lamphier & Co. at the time of said sale by F. Barksdale, trustee, and neither admits nor denies the same as charged in said bill, except that this respondent expressly denies that any part thereof was for any indebtedness of this respondent or his wife Sarah D. Partee.

To special interrogatory 1st this respondent says that he did not consider it his duty, nor did he consider himself under any obligation to give complainants notice of said sale, because complainants' attorney in New Orleans, who were also attorneys of this respondent and his wife, had put a portion of said claims in the hands of attorneys at Yazoo City, and this respondent, by reason thereof, supposed that they

had repudiated said trust-deed. Respondent further says that he is advised and believes, and so says, that it was not his duty to give said complainants notice of said sale.

To interrogatory 2d respondent says that said lands were at
278 that time, that is, the day of the sale, worth about the amount or perhaps more than what they sold for. Respondent says that there was an incumbrance on said "No Mistake" and "Tyrone" lands of over eight thousand dollars, under a decree of the administrator of Christopher Sarah D. Partee. The inducement to make said release of errors was to obtain time for the payment of said judgment. This was the only consideration.

To 4th interrogatory respondent answers that said execution by reason of said release of errors was stayed until January, 1868, and this respondent and his wife, finding that they were unable to pay said judgment as they expected to do, sued out a writ of error to the high court of errors and appeals, and until the decision of said writ of error, the said execution was suspended. Respondent says that immediately after said decision of said high court of errors and appeals, said writ of venditioni exponas was issued and said sale had thereunder.

To interrogatory 5th respondent answers, I never did, nor did Sarah D. Partee ever purchase said judgment of said Stuart at any time, either before or after said sale.

279 To interrogatory 6th respondent answers, I was present at said sale; said lands were sold on the 4th of January, being the 1st Monday of January, 1869, and were sold by S. M. Dyer, sheriff of Yazoo County, Mississippi. There was also a large number of other persons present; among the number was Richard Barkley, a judgment-creditor next in priority to James Stuart. There was, as I am informed and believe, the sum of five hundred and fifty dollars paid on that day by James D. Partee on his purchase of said lands, to the attorneys of said Stuart.

To 7th interrogatory, this respondent answers that James D. Partee and a number of freedmen are in the possession of said lands, holding the same, as respondent is informed and believes, for Tho's A. Nelson, or Nelson, Lamphier & Co., the said James D. Partee acting as agent or manager of said Nelson, or said Nelson, Lamphier & Co., as this respondent is informed, for wages or a salary. This respondent and his wife, said Sarah D. Partee and their family, except James D. Partee, resided for some time after said sale under said vendi. by S. M. Dyer, in Tennessee, and now, and for more than two years past, have resided
in S't Louis, in the State of Missouri. Respondent says that since
280 said sale under said vendi., the only claim or right that either he or wife set up was the homestead exemption for his wife.

To 8th interrogatory, respondent says that as he is informed and believes that said debt to Nelson, Lamphier & Co., by James D. Partee, was commenced in 1866 and continued on from year to year, and was for plantation supplies, mules, farming implements; a part was for money advanced by said Nelson, Lamphir to said James D. Partee, with which the aforesaid payment was made by him on said No Mistake lands at said sale under said vendi.

This respondent says that he does not know who made the examination for said Nelson, Lamphier & Co., before said trust-deed was executed; don't know whether they or their attorneys inspected said record, nor does this respondent know who was their attorneys in the matter

of the execution of said trust-deed. Having fully answered, respondent prays to be hence dismissed with his reasonable costs, &c.

J. A. P. CAMPBELL,
R. BOWMAN,
For Def'ts.

UNITED STATES OF AMERICA,
Southern District of Mississippi:

Before me, W. H. Mangum, a United States commissioner at Yazoo City, in and for the district aforesaid, personally appeared William B. Partee, the defendant in the foregoing answer, who makes
281 oath and says that the facts set forth therein, as of his own knowledge, are true, and those stated upon the knowledge and information of others he believes to be true.

W. B. PARTEE.

Sworn to and subscribed before me at Yazoo City this 23 day of February, A. D. 1874.

[SEAL.] W. H. MANGUM,
U. S. Commissioner for the Southern Dist. of Miss.

(Endorsed:) Filed February 27, 1874. Geo. T. Swann, cl'k.

Exhibit 1 *to answer of W. B. Partee.*

(Copy.)

$5,000.] NEW ORLEANS, *January 5th*, 1861.

On the 27th January, 1862, I promise to pay to the order of Rotchford, Brown & Co., at their counting-house in this city, five thousand dollars, value received, with eight per cent. per annum interest after maturity, until paid.

(Signed) SARAH D. PARTEE.

Authorized by me,

W. B. PARTEE.

(Endorsed on back:) Original held by Canal B'k. Canal B'k. Original in hands of Miles & Epperson.

(Endorsed:) Rotchford, Brown & Co.

282 We waive demand and protest of this note and service of notice on us as endorsers, and hold ourselves bound for the payment thereof in same manner as if it had been regularly protested and notice served on us.

New Orleans, 18th Nov., '61.

(Signed) ROTCHFORD, BROWN & CO.
P. pro. A. J. AIKIN.

NEW ORLEANS, *July* 10, 1866.

Received for collection from the N. O. Canal and Banking Company the original of the above note.

And afterwards, to wit, on the 28th day of February, A. D. 1874, the answer of James Stuart was filed in the clerk's office of said court, which, with the exhibits thereto, are in the words and figures following, to wit:

To the honorable the judge of the circuit court of the United States for the southern district of Mississippi, in equity sitting:

The answer of James Stuart to a bill of complaint exhibited in
283 this honorable court by the Canal Bank of Louisiana *et* al. against W. B. Partee, his respondent, or others.

This respondent saving and reserving to himself all manner of exceptions to the manifold errors and misstatements in said bill of complaint contained, for answer thereto, or so much thereof as he is advised is material for him to answer, answering, says that of his own knowledge he knows nothing of the alleged original indebtedness of said Sarah D. Partee to complainants or the novation thereof, or of the existence of said trust deed, or of the letter of Wilkinson & Bowman, or of said proposition & receipt of Sarah D. Partee, except as appears by the exhibits to said bill, and if in any manner to be effected thereby demands strict proof.

This respondant further answering says that he admits the suit of himself against Sarah D. and W. B. Partee on said promis'ory note in said bill mentioned, and that Wilkinson & Bowman were his attorneys, and that judgment was recovered by default in the circuit court of Yazoo County, Mississippi, on the 6th day of June, 1866, as charged in
284 said bill; admits the release of Enos *sit* forth in said bill, but says that it was not pretended but bona fide.

This respondant admits the suit of error from said judgment, but denies from his knowledge and information that said Robert Bowman and said Partee & wife procured the writ error to be dismissed for the purpose of *a* hindering, defeating or delaying said complainants.

Respondant further answering says that he does not know the purpose of said Partee in suing out said writ or error, but believes it to have been to defeat or delay this respondent in the collection of his judgment.

This respondent says that he is informed and believes that said judgment of the circuit court of Yazoo County, Mississippi, was not dismissed by high court of errors & appeals, but that said release of errors and said judgment by said court was regularly affirmed, as more fully appears by the records of said court, a certified copy of which will be read on the hearing of this cause.

This respondent further answering says that he is advised and believes, and hence denies that said judgment was void and null, or even voidable.

285 This respondant says that he is advised and believes and so says, that the execution of the process as to Sarah D. Partee and W. B. Partee, her husband, in this respondent's suit against them was in law sufficient.

This respondant further answering says that at the time said note was made, on which the judgment of this respondent is based, the said Sarah D. Partee and her husband were residents of the city of New Orleans, in the State of Louisiana. Said note was made there, and was payable there, and was executed according to the laws of that State, and was, as this respondant is informed and believes, legally binding oblegatory upon her, and was not prima facie void.

This respondent says of said original notes mentioned in said trust-deed, William Silliman recovered against other parties judgment in the circuit court of Yazoo County, Mississippi, against W. B. and Sarah D. Partee on the original note due him, and this respondent is informed and believes, and so says, that the note due to said Silliman, upon

which said judgment in his favor was obtained, was made and executed as to place, form, & place of payment exactly as the note due to
286 this respondent by said Sarah D. Partee.

This respondant further answering says that he is informed and believes and so says, that there was an agreement made between the attorneys of said complainants, the said Canal Bank of Louisiana and the Crescent City Bank and the attorneys of said Silliman and the other judgment creditors of said Sarah D. Partee, that the case of Silliman should be carried up to the high court of errors & appeals of the State of Mississippi as a test case as to the liability of M'r's Sarah D. Partee on said original notes, and upon full hearing thereof the judgment in favor of Silliman was affirmed by said court, and is reported in 44 vol. Miss. Reports, p. 278.

This respondont further answering says that upon said writ of error from the judgment of the circuit court of Yazoo County, Mississippi, in favor of this respondant against Sarah D. Partee, there was before said court the entire record, the declaration, the process, and return thereon, the judgment, the plea of the release of errors, and upon said record said judgment of the circuit court of Yazoo County was
287 affirmed; a certified copy of said record will be made on the hearing. Says that the same is yet held and owned by himself, and is not entirely satisfied.

To 1st special interrogatory respondent answers that he was not present in person at said sale under said vendi., but was represented by his attorneys & M'r E. Dunning; that, as far as he knows, that there was no adjudications of lands, but that on the lands bought by respondent, R. A. Barkley, a previous judgment creditor run them up to said sum of $5,200.00, at which bid this respondent became the purchaser; and upon said other lands there was a decree of over $8,000 principal & interest, & James D. Partee, as respondent is informed, bought the same subject to said decree.

Coppies of all letters received from Wilkinson & Bowman & R. Bowman are herewith filed.

To 3d interrogatory respondent answers that he did pay a part of the fees to Wilkinson & Bowman, & yet owes them a balance on said judgment. The amount paid was $458.00, and was a part of the money bid by said Partee on said lands.

To int. 4th. No such understanding or agreement existed at any time as far as this respondent knows or believes.

288 of this either is herewith filed as Exhibits No. 2 to this answer, and urged to be taken as part hereof.

This respondent further answering says that to avoid the delays of the laws thereon existing by the right of the writ of errors & supercedeas with bond only for costs, the right of injunction without and the doubt as to the liability of said Sarah D. Partee in the note due to this respondent, as well as for the purpose of giving the said Sarah D. Partee time to pay said judgment was the condition of said release, the consideration of said release of sums on her part; and this respondent is advised and believes, and so says, that said consideration was good & valid, and sufficient to support said release of errors.

This respondent further answering says that, in consideration of said release of errors, time for payment of said judgment in favor of this respondent against said Sarah D. Partee was given according to suggestion of the letter of Wilkinson & Bowman, marked as Exhibits No. 1 in this answer; that the execution mentioned was given on the lands of

said Sarah D. Partee, and for the tearms before stated the said
289 levy was not enforced by sale, but was postponed. These were the considerations of the said release of errors.

This respondent further answering says that he is informed *in* believes that at the time of the levy of said execution, and at the sale of said lands under said venito. that John T. Heth was the deputy of S. M. Dyer, sheriff of said county of Yazoo.

This respondent further answering says that although said deed to him from said Dyer, sheriff of Yazoo County, purports to have been made on the 5th of January, 1869, and recites that the sale of said lands was made on the 5th of January, 1869, yet said sale of said lands was actually made to this respondent under said *bendelm* exponas on the 4th day of January, 1869, the same being a regular sale day. Respondent denies that said sale was not legally advertised.

This respondent further answering says that after the levy of said execution, for the reasons before stated, the sale under the same was postponed, and at the expiration of the stay the said Sarah D. and W. B. Partee sued out a writ of errors & supercedeas from said judgment to the high court of errors, and the said case was there pending untill some time in November or December, 1868, and after the affirmance of
290 said judgment said writ of vendi. was issued and said sale was made thereunder.

This respondent further answering says that he denies the 8 causes set out by said complainants why said judgment is void are true.

This respondent further answering says that he is informed and believes that said sale was directed and managed by R. Bowman, his attorney, upon conference with Edward Drenning, who was the agent and friend of this respondent.

This respondent further answering says that he does not believe it to be true as charged that any such agreement was ever made between R. Bowman, W. B. & Ja's D. Partee, as charged in said bill, in regard to the bidding in of said lands; and this respondent, to the best of his knowledge, information, and belief, says that said charge is entirely false and without any foundation in truth, and is the offspring of the evil imagination of complainants or their councel. This respondent says that he denies it to be true that said W. B. & Ja's D. Partee paid the attorney fees of R. Bowman. This respondent denies, as far as he knows or is informed, that said Bowman used any effort to keep said property in the possession of said W. B., Sarah, & J. D. Partee.

291 This respondent further answering says that at the time of the issuance of said writ that, as he is informed & believes, the said Sarah D. Partee and W. B. Partee, either, had any personalty upon which said execution could be levied.

This respondent denies that said R. Bowman acted as attorney of Sarah D. and James D. Partee in any matter connected with said judgment and sale.

This respondent further answering says, that as to the reliance of said complainants on said trust deed as charged, and upon said trust deed he knows nothing of his own knowledge, and if in any manner to be effected thereby demands strict proof.

This respondent further answering says, that as he is informed, and believes, the conduct of some of said complainants was very strikingly inconsistent with and contradictory of this charge, as the said Canal Bank, as this respondent is informed, brought suit in the circuit court of Yazoo County on one of the original notes due them, and the said Crescent City Bank also brought on its original notes, and at the time of

the date of said receipts by Partee for said notes as set out in complainants' bill the said suits were then pending, and were afterwards reduced to judgments.

292 This respondent further answering says, that he denies that said Bowman was guilty of any fraud or impropriety of conduct in sueing out said execution, but was simply acting in discharge of his duty as an attorney. This respondent further answering says, that said complainants, neither of them, ever offered to pay his judgment, and he would at any time have willingly and gladly accepted the amount thereof, and have transfer'ed the same to them. This respondent is informed, and believes, and so says, that said complainants or their attorneys knew of the existance of said judgment, and of its priricy over said alleged trust deed.

This respondent denies that the debt upon which his judgment is based was provided for in said trust-deed. This respondent says that at the time said trust-deed was made, that his attorney R. Bowman, as he is informed and believes, refused to include his claim therein.

This respondent further answering says, that after said trust-deed was executed, this respondent was approached upon the matter of inserting his claim therein which was referred to his said attorneys, who advised against it, as will more fully appear by a copy of their

293 letter dated Dec. 4th, 1866, and marked as Exhibit 3, and made part of this answer. This respondent further answering says, that he admits that said lands in Yazoo were the only property of appreciable value belonging to said Sarah D. Partee, and that lands at the time of said sale were selling at low prices, but this respondent is advised that he was not required to wait until/ lands appreciated in value until/ he should make his judgment. This respondent denies that he is not a bona fide purchaser. This respondent says, he knows nothing of said correspondence between complainants' attorneys & R. Bowman, nor of said trust-deeds by James D. Partee, & if to be effected thereby demands strict proof. This respondent denies that he ever sold or transfer'ed said judgment to the Partees, or either of them, but of this cause, and this respondent claims the same benefit thereof as if he had speedily pleaded the same.

This respondent further answering says, that he received a letter from Mess'rs Wilkinson & Bowman, dated Dec. 24th, 1867, in which they say:

"We have had execution in your case against M'r Partee issued

294 & levied. Under a recent act of the legislature he can take the case to the supreme court upon giving bond for costs, or he can enjoin the judgment without bond. He requests us to give him an extension of time within which to pay, say one half next fall and the balance in one year. If M'r Partee will pay we would advise the giving of time, as he can get it on account of the late laws mentioned above, which were recently passed by the legislature as relief measures. Let us hear from you as soon as possible."

A copy of said letter is herewith filed as Exhibits No. 1 to this answer.

This respondent further answering says, that by letter of the 1st of March, 1867, he replied to said letter of Wilkinson & Bowman, referring said extension of the payment of said judgment to them.

A copy of this having fully answered, respondent prays to be hence dismissed with his cases, &c.

J. A. P. CAMPBELL,
R. BOWMAN,
Sol's.

235 EXHIBIT 1.

YAZOO CITY, *Feb'y 12th*, 1866.

M'r JAMES STEWART, *New Orleans:*

DEAR SIR: Your favor of 26th January last, inclosing copy of note of Sarah D. Partee for $5,397.87 is received. M'r's Partee is perfect good for the money. Mess'rs Hogan & Patton, 188 Gravier street, are authorized to reciept in our name for the claim.

Respectf'y y'r ob't s'v'ts,
(Signed) WILKINSON & BOWMAN.

EXHIBIT.

YAZOO CITY, *July 30th*, 1866.

M'r JAMES STEWART, *New Orleans:*

DEAR SIR: Your favor of a late date to M'r E. Danning has been shown us. We cannot advise the acceptance of M'r Partee's proposition. Your claim is now perfectly secure, & the money will be forthcoming next spring, and it is for you to say what time, if any, you will give him, but we have reason to believe that the lands proposed to be sold to you is almost, if not entirely, unsaleable and worthless.

Y'rs respectf'y,
(Signed) WILKINSON & BOWMAN.

296 EXHIBIT.

YAZOO CITY, *December 4th*, 1866.

M'r JAMES STEWART, *New Orleans:*

DEAR SIR: Your favor of a late date is received & contents noted. We have nothing to add to what we have already said as to an opinion of the safety of your claims against Partee & wife except that we expressly refused when we drew the trust-deed from them to include your debt in it, for the reason that yours was already a *lein* and the only *lein* on their property.

Of course, however, if you choose to abate any of your debts against M'r Partee, we can have no objection.

Respectf'y,
(Signed) WILKINSON & BOWMAN.

YAZOO CITY, MISS., *Feb'y 24th*, 1867.

M'r JAMES STEWART, *New Orleans:*

DEAR SIR: We have had execution in your case against M'r Partee issued & levied. Under a recent act of the legislature he can take the case to the supreme court upon giving bond for cost, or he can
297 enjoin the judgment without bond. He requests us to give him an extension of time within which to pay, say, one-half next fall and the balance in one year after. If M'r Partee will pay we would advise the giving of time, as he can get it on account of the late laws mentioned above, which were recently passed by the legislature as relief measures. Let us hear from you as soon as possible.

Yours, very truly,
(Signed) WILKINSON & BOWMAN.

YAZOO CITY, MISSISSIPPI,
January 24th, 1868.

M'r JAMES STEWART, *New Orleans:*

DEAR SIR: We received a message through M'r Drenning from you a few days since in relation to your case against M'r Partee & wife. All of their property, which is very large, is bound for your debt, and it can be made if we are directed to sell. We do not think it will ever be made without. But as we are in doubt as to what arrangements and agreements have been made between M'r Partee and yourself, we wish express direction from you what to do; and we have to put you on your guard against giving any time for any definate period, as such
298 an agreement would postpone your lein to junior judg'ts & thereby loose your debt.

Yours, respectf'y,
(Signed) WILKINSON & BOWMAN.

YAZOO CITY, MISS., *Sept. 10th*, 1869.

M'r JAMES STEWART, *New Orleans:*

DEAR SIR: On yesterday we had a call from M'r Ware with a view of buying "Lake Dick." There frequent inquiries for swamp lands and they are coming into demand. We wish to know if the place is for sale, & if so, upon what terms.

Yours, resp'tf'y,
(Signed) WILKINSON & BOWMAN.

YAZOO CITY, MISS., *Sept. 12th*, 1869.

M'r JAMES STEWART, *New Orleans:*

DEAR SIR: We have recieved your favor of the 10th inst. Immediately after the sale of Partee's lands under your execution, as well as before, we wrote to you, but our letters were returned not delivered. We thought of suing Partee for the rend of Lake Dick, which will test his right to the homestead. We think the place can be sold ad-
299 vantageously this fall or winter. We have had a good many applications for lands, and have advised parties wishing to purchase to examine Lake Dick, stating that we thought you would sell it for the am't of your judgment. There is a decree in favor of the estate of Christopher Todd against Partee & wife, under M'r Dick's will, which binds the No Mistake lands for about $8,000.00. If the lands are sold under this decree, by bidding over the am't thereof to the amount due you, we think you can make the balance of your money.

Y'rs, truly,
(Signed) WILKINSON & BOWMAN.

YAZOO CITY, MISS., *Dec'r 9th*, 1869.

JAMES STEWART, Esq., *New Orleans:*

DEAR SIR: Your favor of 5th inst. received. We have given notice to Partee to deliver up possession of the place on the 1st January next.

Yours, truly,
(Signed) WILKINSON & BOWMAN.

YAZOO CITY, MISS., *April 21st*, 1870.

JAMES STEWART, Esq., *New Orleans:*

300 DEAR SIR: Enclosed we send you a bill of complaint, W. B. Partee & others, to be sworn to by you. Let the affidavit be be-

fore a commissioner of this State. M'r A. J. Herd (Commercial Place, we believe, is his place of buisness) is one who understands his buisness very well. When sworn to return to us. We have brought suit for the lands as well as rents. The only contest will be about the homestead. If we succeed, the place will be worth, we think, at least ten thousan l dollars.

Yours, very truly,
(Signed) WILKINSON & BOWMAN.

YAZOO CITY, MISS., *June 30th*, 1870.

M'r JAMES STEWART, *New Orleans:*

DEAR SIR: We herewith enclose you a bond for injunction in the Partee case. Sign it and return to us as early as you can. M'r Drenning promises to get the sureties on it. We would have sent it before this, but we had no judge to grant the fiat.

Yours, truly,
(Signed) WILKINSON & BOWMAN.

301

YAZOO CITY, MISS.,
Jan'y 21st, 1871.

JAMES STEWART, *New Orleans:*

DEAR SIR: Your favor of late date received. The question of Partee's homestead exemption will be determined next April. I think from proof already made that his claim cannot be sustained. Will perhaps see you next week in New Orleans.

Y'rs truly,
(Signed) ROB'T BOWMAN.

YAZOO CITY, MISS.,
May 22, 1871.

JA'S STEWART, *New Orleans:*

DEAR SIR: Your favor of the 15th inst. is at hand. The case of yourself against Partee for the homestead on Lake Dick was not tried at the April term of our court as all the testimony was not in, & Partee's counsel claimed the full time for taking it. I hope we will be able to try it in July next.

Y'rs truly,
(Signed) R. BOWMAN.

302

NEW ORLEANS,
26th Jan., 1866.

E. C. WILKINSON, *Yazoo City:*

DEAR SIR: You will find attached a copy of a note of M'r's Sarah D. Partee for collection, to which I ask your early attention. I will forward the original, if an opportunity offers, or you, perhaps, may find some person coming to the city whom you would authorize to receive & receipt for the same to Richard Nugent & Co., 192 Common street, who have my papers in their possession. Have the goodness to advise me what may be proposed in regard to his debt, as it is not my wish to sue unless forced to do so.

Very resp't.

JAMES STEWART.

$5,397.87] NEW ORLEANS, *Dec. 18th*, 1861.

Twelve months after date I promise to pay to the order of Richford, Brown & Co., at their counting-house in this city, fifty-three hundred & twenty-seven $\frac{87}{100}$, value received, with eight per cent. per annum interest after maturity until paid.

(Signed) SARAH D. PARTEE.

Authorized by me—

W. B. PARTEE.

303 EXHIBIT I.—No. 2.

NEW ORLEANS, *15th Aug.*, 1866.

Mess'rs WILKINSON & BOWMAN, *Yazoo City:*

DEAR SIRS: Your esteemed favor of the 30th inst. is at hand, and I particularly note contents. I have to thank you for the prompt manner in which you have attended to my business in the Partee matter, to say nothing of the cheering words you sent me with regards thereto. M'r Partee called on me some time since and left with me a memorandum of the propositions you now allude to which I consented to think over, but I never for a moment entertained the idea of accepting such a settlement, and now M'r Partee must have known that I could not in my condition encumber myself with dead weight (which the land would be) when there was the faintest prospect of recovering my money, or at least a considerable portion of it. I entirely concur with your view as to the land he proposes to give to me and unequivocably decline such a settlement. M'r Partee is well aware that my necessities compell me to collect all the ready money that I can, and as regard set'ling my claim by
304 installment he cannot but understand that they would be placed in such a shape as to insure beyond a peradventure the mutual payment thus proposed, & that only after a liberal deduction has been made of the debt in cash at date of settlement.

Very resp'ly,

(Signed) JA'S STEWART.

(Endorsed:) Filed Feb'y 28th, 1874. Geo. T. Swan, clerk.

And afterwards, to wit, on the 20th day of March, 1874, the following replications were filed in the clerk's office of said court, which are in the words & figures following, to wit:

Replication to answer of T. A. Nelson.

In the circuit court of the United States for the southern district of Mississippi. In equity.

CANAL BANK)
) 158.
W'M B. PARTEE ET AL.)

And the said complainant, for replication to the said of
305 T. A. Nelson filed in the above-entitled cause, says that the matters herein contained are vague, uncertain, untrue, and insufficient, and that the allegations in complain'ts said bill contained are true, sufficient, & certain; and this they are ready to maintain and prove as the court may direct.

NUGEN & YERGER, *Sol.*

(Endorsed:) Filed March 20th, 1874. Geo. T. Swan, clerk.

Replication to answer of James Stuart.

In the circuit court U. S., s. dis. Miss. In equity.

CANAL BANK ET AL.
vs. } 185.
W'M B. PARTEE ET AL.

And the said complain'ts, for replication to the answer filed by James Stuart, say that the matters stated in said cause are uncertain, untrue, and insufficient, and that the allegations in the original bill are true, certain, and sufficient; and this they are ready to maintain & prove as the court shall direct.

NUGENT & YERGER, *Sol's.*

(Endorsed:) Filed M'ch 20th, 1874. Geo. T. Swan, clerk.

In the circuit court U. S., so. dis. Miss. In equity.

306 *Replication to answer of W. B. Partee.*

CANAL BANK ET AL.
vs. } 185.
W'M B. PARTEE ET AL.

And this said complainants, for replication to the answer of W. B. Partee, say that the matters therein stated are vague, untrue, and insufficient, and that the allegations of their original bill are true, sufficient, and certain; and this they are ready to maintain and prove as the court shall direct.

NUGENT & YERGER,
Sol's.

(Endorsed:) Filed March 30, 1874. Geo. T. Swan, clerk.

PROOF BY COMPL'T.

Dep'n of H. M. Hyams.—Filed Aug'st 4, 1874.

In circuit court of the United States for south. district of Mississippi.
In equity.

CANAL BANK ET AL.
vs.
W'M B. PARTEE ET AL.

Int's to be propounded to H. M. Hyams and Jonas, citizens of New Orleans, whom answer' thereto are to be read as ordered at the hearing in behalf of compla'n't.

307 Int. 1. State your place of residence & business; and if an att'y at law, how long you have been practicing that profession.

Int. 2. Examine deed of trust hereto attached, marked "Exhibit A," and state all you know about it—how it came to be executed, who prepared it or who drafted the deed, who suggested the name of Robert Bowman as trustee, how the creditor secured came to acqu'es'e in the selection of said Bowman, and what representations, if any, were read by

R. Bowman as to the value of the property conveyed by said deed and the prior liens upon it, and whether you represented said creditor.

Int. 3. State whether the deed was accepted by any or all of the creditors named therein, and when & by whom, and whether the old note representing the debt secured was delivered up to the grantors of the deed, & when.

Int. 4. Please state whether or not upon and after the taking up the security the creditors secured them upon it for protection, and whether or not they depended upon said Bowman, as their trustee, to prevent any loss that might be occasioned by the seizure and sale of the lands thereby e d under any prior judgment, and particularly a prior
308 suit in Yazoo County in favor of one James Stewart against the grantors in said deed, and what reasons they had for relying on said Bowman.

Int. 5th. Please state whether or not any conversations passed between you and said Bowman when said deed was accepted in reference to said Stewart's judgment, and the substance of their conversations; and whether or not said Bowman was notified that the creditor secured by said deed had the ability to do so and would discharge said Stewart's judgment whenever it became necessary.

Int. 6. Please state whether or not said creditors had such ability to discharge said judgment, and whether or not they had been notified of the sale of said lands under final process in said case by James Stewart, they would have discharged his judgment or purchased the lands mortgaged for their protection.

Int. 7. Please file with your deposition all letters received by you from said Bowman and copies of all letters written by you to him touching the subject-matter of this connection, and all papers & receipts of any kind connected with the transaction.

Int. 8. State fully any other matters or thing connected with this connection which may be of benefit or advantage to either party thereto.

NUGENT & TERGER,
Sol's.

309 In the circuit court of the United States, southern district of Mississippi. In equity.

CANAL BANK ET AL.
vs.
W. B. PARTEE ET AL.

Cross interrogatories to be propounded to H. M. Hyams and Jonas, citizens of the city of New Orleans, witnesses for complainants in above-stated case.

X-int. 1st. Did the creditors in said trust-deed made by Sarah D. & William B. Partee, within nin'ty days after the date thereof, signify their acceptance in writing of the terms and provisions of said deed? If so, to whom was said notice made, by whom, and at what date? Did not W. B. Partee suggest the name of Robert Bowman as trustee? Did not said W. B. Partee propose to you the terms of said deed as a settlement of the indebtedness of Sarah D. Partee to the creditors named in said deed?

X-int. 2. Who of said creditors named in said trust-deed made by Sarah D. and William B. Partee on the 19th of November, 1866, did you represent as attorneys? Give their names, the character of their
310 claims; state amount, when due, to whom payable.

X-int. 3. If you answer aye to 3 interrogatorys in chief, then state specially who of said creditors in said trust-deed named accepted the same. Was said acceptance in writing? If so, to whom addressed? When was it made? Annex to your answer. Is this interrogatory a copy of said acceptance, if in your possession?

X-int. 4. If you answer to 5 interrogatory that you had a conversation with Robert Bowman, then state if said conversation was not held in your office, in New Orleans, about Jan'y, 1867. Did not Robert Bowman state to you that, by the terms of the trust-deed from Partee & wife, if the creditors accepted the composition of their debts that it must be done in nin'ty days from the date thereof, in writing? Did you not concur in this construction of the deed? Did or not the said Robert Bowman ask you, if the creditors accepted the same, to give him notice thereof? Did or not you promise so to do?

X-int. 5. In the said conversation, did or not said Robert Bowman tell you that in order to prevent said lands conveyed by W. B. &
311 Sarah D. Partee to him, said Robert Bowman, trustee, in first payment of the claims in said trust-deed mentioned (said lands being in Sunflower and Tallahatchee Counties), that it was necessary that you should pay the taxes thereon? Did you ever do so or offer to do so?

X-int. 6. Did you ever, after said conversation, in any manner communicate with said Robert Bowman respecting said trust-deed until after the sale under the judgment in favor of James Stewart vs. W. B. Partee & wife? Did you, before said sale and after said conversation, notify him that any of the creditors whom you represented had accepted the terms of said trust-deed, or that you or any depended on him to represent their interest?

X-int. 7. Is or not the New Orleans Canal & Banking Co. the same as the Canal Bank of New Orleans? Did you not send to Miles & Eppison, attorneys at law in Yazoo City, Mississippi, two or more of the original claims embraced in said trust-deed, one in favor of the New Orleans Canal & Banking Co., or Canal and Banking Co. of New Orleans, & the other in favor of complainant, the Citizens' Bank, with instruction to bring suit thereon against Sarah D. & W. B. Par-
312 tee? Did they or not bring suit on said claims? Were they not your attorneys in Yazoo City as the attorneys of said Canal & Citizens' Bank? Did they not advise you of priorments of claims against said Partee? Did they not advise you of the advertisement of sale under Stewart's judgment?

X-int. 8. Did you or not know of the judgment of Stewart against Partee & wife, and when known, & by whom were you first informed of it? Did you not know that it had priority over said trust-deed, even if the deed had been accepted by the cestue que trust? Did you or not know that Stewart resided in New Orleans, the place of your residence? Did you even offer to pay said judgment, and, if so, when, where, and to whom?

X-int. 9. Did you or not depend on Mess'rs Miles & Eppison to represent you or your clients' interest against Partee & wife? Did you correspond with them on the subject? If so, annex to your answer to this interrogatory copies of your letters to them, as well as their letters to you. If you relied on said Robert Bowman to represent the interests of your clients, why did you fail altogether to correspond with him?
313 X-int. 10. Did you ever request said Robert Bowman to sell said lands conveyed to him by W. B. and Sarah D. Partee; if so, when & how?

BROWN & CAMPBELL, *D.*

STATE OF LOU'SIANA,
City of New Orleans, ss:

Be it remembered that on this 29th day of July, 1874, by virtue of the consent of parties and the annexed interrogatories and cross-interrogatories, I, George William Christy, a commission merchant in the city of New Orleans, La., duly commissioned and qualified by the executive authority and under the laws of the State of Mississippi to take acknowledgement of deeds, &c., to be use' on record therein, did proceed to take the depositions of H. M. Hyams, of the city of New Orleans, State of Louisiana, aforesaid, a witness for the complainants in a certain cause now pending in the circuit court of the United States for the southern district of Mississippi, in equity, wherein the Canal Bank et al. are complainants and William B. Partee et al. def'ts.

Interrogatories and cross-interrogatories hereto annexed as follows, to wit:

314 I caused the said H. M. Hyams, a person of sound mind and upwards of fifty years of age, to come before me at my office, No. 30 Camp street, in the city of New Orleans, State of Louisiana. The said H. H. Hyams, by me first duly cautioned, sworn, & examined, the truth, the whole truth, and nothing but the truth to testify in answer to said interrogations & cross-interrogations, did despose and say:

In answer to interrogation first, he says: I reside in New Orleans, & am an attorney at law; I have been in practice some thirty-odd years.

See record, p. 67, for Exhibit A. In answer to interrogatory second, he says: I have examined the deed of trust annexed hereto marked Exhibit A. On the 17th July, 1866, Mr. Partee called at the office of Hyams & Jones, we having in our hands for collection some claims against his wife; he expressed great anxiety to make a proposition to all their creditors in New Orleans by paying them 50% face on a credit of one to five years, that is, payable on the first of January of the years 1867, '68, '69, '70, & '71, to be secured by mortgage or deed of trust on plantations in cultivation, and the remaining 50% face by a trans-

315 fer or deed of wild or uncultivated lands. We intimated to him that we believed the creditors whom we represented would accept such a proposition, and he said he would endeavor to see all the creditors before he left town. His proposition is hereto an-

For Exhibit No. 3, see page 58, record. nexed marked "No. 3." Some time after, in the fall or winter of 1866, on his arrival in New Orleans he again called on us, informing us that he had come to the city on the business that he had spoken to us about, but had modify*e*d his wife's proposition so as to make the maturities to fall one year later, to wit: 1st January, 1868, 1869, 1870, 1871, & 1872, as it would thus better enable her to meet punctually those latter stipulated instruments, and requested us to copy the propositions which he had left with us on the 19th July, 1866, making that and some other changes which were added at his request. I annex that document, marked "No. 4"; it is in my handwriting, signed by M'r Partee. I added to it at the time (in pencil) the words, "Hyams & Jones have notes of Canal Bank, Union Bank, & Crescent City Bank." M'r Partee presented us w'th the letter of Mess'rs Wilkinson & Bowman addressed to us, dated Yazoo City, November 21st, 1866, which I hereto annex as part of my answer to

316 For Exhibit 2, see page 81. MSS. this interrogatory, marked "No. 2." This letter had a strong influence in inducing us to accept for our clients & with their knowledge and acquies'ence the proposition of M'r Partee for his wife, and we informed him that our clients did accept.

M'r Partee made visits to our office on his coming to New Orleans from the country; they were hasty & short, as they appeared to be, or was always hurried. I cannot charge my memory with exactness as to dates, but I think it was late in the winter of 1866; it was possibly earlier or later that he introduced us to Judge Bowman as the gentleman who had been proposed as trustee, or who had been appointed trustee. I had not met *known* Judge Bowman before, and it was the only time we had ever had any personal interview. I cannot say whether it was before or after the execution of the deed of trust and its presentation to us; it is my impression that it was after the execution, but that when it was first shown to us it was not left with us, but was taken back by M'r Partee to have proper government stamps put upon it and canceled, as he said they could not be got in Yazoo City, and he had either to come or send to the city for them. I do know that as regards
317 the new notes that when he brought them down first he took them back with him on his return home, to have them identified on their face; that they were secured by mortgage; I do not know the date, but I annex hereto, marked "No. 5," t' wit—

Partee's memorandum written in pencil in these words:

"I will take the notes back to the clerk of Yazoo County court to be endorsed on the face that they are provided for in deed of trust, and will return them to you for distribution to the accepting creditors.

"Yours, &c.,

"W. B. PARTEE."

It is probable that I was absent from the office at that time, and the notes were taken by him, as he knew where we placed them. When Judge Bowman was in our office M'r Partee was present all the time, and we told them both that we accepted M'r Partee's proposition for the clients we represented, and it was understood that as to other creditors the deed of trust and new notes were to be left with or to be sent back to us to be exhibited to them, and, on their consenting, that we should receive the old notes and deliver to them the new ones. The deed and the notes su'sequently came into our possession. Whether de-
318 livered to us by M'r Partee in person or sent to us by him I cannot & do not remember.

We received calls from many, probably a majority, of the creditors; some refused to receive the new notes and give up the old ones; others, probably or possibly induced by our action for the creditors whom we represented, did accept the new notes and give up the old ones; all the creditors who were represented by us gave up the oid notes. They were the Canal Bank, the Crescent City Bank, the Union Bank, and Slark, Staffer & Co. The others who received new notes and gave up the old notes were J. M. Denman & C', Conner & Son, Louisiana State Bank, E. Dupasseen & Co., and M'r Stea Valve & Co. The other creditors either negiected to call on us or refused to take the new notes, to wit, W. J. McLean, John Montgomery, Benoist, Shaw & Co., William Lillaman, W. C. Bibb, H. Hopkins, Bank of New Orleans, Bank of Louisiana, and C. C. Peck; and all the new notes which were intended for them were handed back by us to M'r Partee on the 21st January, 1868, in New Orleans. The new notes intended for M'r Miller he re-
319 quested us to retain and to deliver them to M'r Miller on his surrendering to us the old notes; neither of which has ever been done. For four of the creditors we did not receive new notes, and therefore had none to return to M'r Partee, to wit, Charlotte Levy, Rotch-

fort, Brown & Co., J. Homthall, & R. A. Barkley. We also delivered to him the new notes to be delivered to M'r's Partee, who appeared to represent the claims standing in the name of S. O. Nelson & Co. I annex hereto a full list, marked "B, No. 10," made by me of the debts mentioned in the deed of trust, putting the full amounts in the first column, putting the 50% face thereof in the 2nd column, and extending on each claim what was done in the premises, to wit: 1st. Who took the new notes and surrendered the original ones. 2d. Who refused to take the new notes. 3d. Where the new notes had been handed to us by M'r Partee; and, 4th. Where we returned all the new notes to M'r Partee which had not been received by creditors, and also where we handed to him the old notes where creditors had received new notes.

For further answer to this interrogatory, I cannot say how the deed came to be executed except that it was intended to carry out M'r's
320 Partee's proposition to her creditors, made by her husband. I know not who drafted the deed or proposed it, other than what can be gathered or infer'ed from the proposition in writing and the acts of the parties themselves, and the letters of Mess'rs Wilkinson & Bowman, above refer'ed to, of the 27th November, 1866, expressing their intentions.

I do not know who suggested the name of M'r Bowman; it certainly was not us. We took for granted that M'r's Partee, and the accepting creditors whom we represented, & the others were satisfied with the selection of that gentleman as trustee. I do not recollect any specific representations made by M'r Bowman when he visited our office with M'r Partee; the conversation was general, but M'r Partee was the principal spokesman. M'r Bowman seemed to acquiesce in his representations. M'r Partee spoke of the incumberance on the property, but that there would be no difficulty in his wife's paying it off if the creditors agree to the terms proposed by his wife.

We at once agreed for the creditors we represented, considering it a good arrangement for them, and so far as M'r Bowman's visit to our office was concerned, I regarded it as being entirely to give us con-
321 fidence in the arrangement, and to enable us to impart our confidence to our principals, and we did so act in our interviews with other creditors as they called on us to know what we had done and our reasons for doing so. We believe that our accepting did have its influence upon other accepting creditors to do the same; some did refuse to agree, especially the Bank of Louisiana, and I annex hereto, marked "No. 6," the letter of Miles Taylor, esq., who was the attorney of that bank, handed to me by M'r Partee. We had no personal knowledge of the property. We took for granted what was stated in the letter of Mess'rs Wilkinson & Bowman. We did not think it at all necessary to apply to the references made to gentlemen in this city relative to M'r Bowman. We took for granted his fitness and capacity for the trust.

In answer to interrogatory three, he says: To the third interrogatory I answer that I believe that I have answered the same fully in my answers to the 2nd interrogatory above. I delivered the new notes to the creditors represented by Hyam & Jones on the 11th day of February, 1867, and explained to them by letter that the same were pro-
322 tected by the deed of trust, and for the remaining 50% they received a conveyance by that deed of certain lands, &c.; hereto copies of our letters of the 11th February, to the Canal Bank, to the Union Bank, to the Crescent City Bank, & to Slark, Slauffer & Co., & enclosing and delivering to them the new notes taken in surrender of

the old ones, under the deed of trust, &c., and I make them a part of my answer to this interrogatory, and mark it "No. 17."

In answer to interrogatory fourth he says: In answer to this interrogatory I cannot say how far that after taking the new notes and other property secured by the deed that the creditors did rely upon it for their protection. how far they depended upon M'r Bowman as their trustee to prevent any loss that might be occasioned by the seizure & sale of lands conveyed under any prior judgment, & particularly a judgment in Yazoo County, in favor of James Stewart against the grantees in said deed, and what reasons they had for relying on said Bowman; but I do say that they did rely on him, at least for information to be timely given to
323 them of the prosecution of that or any other claim adverse to their interests, and whereby their rights would be defeated or destroyed. They certainly did not expect him to advance money for any such purpose, but they certainly did not expect him to stand by while the proceedings were ripening to destroy the very trust itself without giving them timely notice & information, by which they would have had an op'ortunity to intervene and protect their rights. He was present when M'r Partee said there would be no difficulty or doubt of his wife's being able to pay out of the crops the previous incumberance of the creditors protected by the deed of trust; by granting time, would leave the property in her hands, whereby she could do so. The creditors relied on that assurance.

M'r Bowman was not ignorant of that reliance, and so soon as the knowledge of her default came to him, and that the property was seized and to be sold for that debt, he should, as trustee, have advised the accepting creditors of the fact. The assurances of M'r Partee were made in M'r Bowman's presence, and he knew that the creditors repre-
324 sented by us relied on them, and it formed the main inducement to their acquiescence.

In answer to interrogatory fifth he says: I do not know that I can make any further statement responsive to this interrogatory other than I have already stated above, except that I am confident that nothing was then said about the accepting creditors paying off previous incumberances, for the very obvious reason that we were assured by M'r Partee in M'r Bowman's presence that his wife could & would do so. I further add that I did not feel called upon at the time to say that the creditors would advance if necessary the amount of the Stewart judgment; the creditors were not called on at that time to advance money; on the contrary, M'r Partee said in M'r Bowman's presence that it would be paid by her; nor did I notify M'r Bowman that the creditors who had been secured by the new notes and deed had the ability to pay the Stewart judgment and would discharge it when it became necessary, but I do say that if the creditors represented by my law firm had been notified in time by M'r Bowman or any one else to furnish an
325 amount necessary to pay the judgment and prevent a sale and thereby protect their debt they would have done so, or bought the property at the sale, or taken such or other appropriate steps at once to prevent loss to them.

In answer to interrogatory sixth he says: In answer to this interrogatory I refer to my answer to the 5th interrogatory and make it my answer hereto. For further answer I say that said creditors had the ability to discharge said judgment.

In answer to interrogatory seventh I answer that in addition to the documents or letters I annex hereto the foregoing letters and copies of letters. I annex hereto, marked Exhibit A No. 10, a litiral copy of

the original list made by me of a memorandum of the trust-deed and the names of all of the creditors, and the amounts due them as set forth in said deed, and of the creditors to whom the new notes were delivered and who surrendered up the old ones, and of M'r Partee's receipt for the old notes surrendered dated January 21st, 1868, and the new notes not called for and which he received back from us on that day.

326 This copy was made by M'r Leberton from the original, which letter has always been in our possession, and I have seen it often, but have temporarily misslaid it, and have made dil*l*igent but unsuccessful search for it in our office, where I am sure it has got mixed up with other papers, but I expect yet to find it.

M'r Partee signed the original receipt in my presence, and I make oath that the copy now presented made by M'r Le Breton is a true and literal copy of the original, now temporarily misslaid. I also annex Mess'rs Hyams & Jones' letter to Mess. Miles & Epperson, dated May 13th, 1867, marked No. 7, in which we say in relation to M'r Partee's debts. "We have taken the new mortgage notes of M'r's P. for those sent to you for collection, & I think we so informed you; if not, it was a neglect and we will send you a statement in a day or two of the settlement which is on very long time. Do not press the suit further." Also letters of W. B. Partee to Hyams & Jones, dated Lake Dick, May 28th, 1867, marked "No. 8," rec'd 3d of June by Hyams & Jones, and answered on the same day; and I annex copy of our answer, marked

327 "No. 9," cut from our letter-book; also copy of letter from Hyam & Jones to Miles & Ep'rson, marked "No. 11," dated 8th March, 1869; also copy of Hyams & Jones of same date to Mess'rs Willkinson & Bowman, taken from letter-book of Hyams & Jones, marked "No. 12"; also Mess'rs Wilkinson & Bowman's letter of 10 h March, 1869, to Hyams & Jones, rec'd by the latter on 15th March, 1869, marked "No. 13," and also copy of Hyams & Jones' letter of 15th March, 1869, to Mess'rs Wilkinson & Bowman marked "No. 14"; also Wilkinson & Bowman's letter to Hyams & Jones, dated 22 March, 1869, marked "No. 15." I also annex, marked "No. 16," Miles & Eperson's letter to Hyams & Jones, dated March 1, 1869, and which was by Hyams & Jones answered on the 8th, which answer see above marked "No. 11."

In answer to interrogatory eight he says: In answer to the 8th interrogatory, I refer to M'r Partee's letter to us, of the 28th May, 1867, rec'd June 3d, 1867, marked 8 in my answer to 7th interrogatory. He does not complain that the suit we had against him had not suspended in the contracts he mentions that he finds that others, to wit,

328 Walworth's estate, McLean, Montgomery, & also Silliman had not been suspended, and he asks us to give him a statement of all that have accepted the ben*e*fit of the trust-deed, and concludes by hoping that all will consult their interest by accepting at once.

Cross interrogatories:

In answer to 1st X interrogatory, he says: I am not aware that the creditors executed in formal terms any express deed or instrument in writing, signifying their acceptance within ninety days after its date of the terms and provisions of the deed of trust mentioned, but I do know that the creditors whom we represented, to wit, the Canal Bank, the Union Bank, the Crescent City Bank, and Slark, Stauffer & Co., did not long after the date of that deed, and within 90 days therefrom, accept in fact the same by actually receiving the new notes for 50% face and delivering up the old notes; besides the creditors above mentioned, others did so, to wit: J. M. Denman & Co., Conner & Son, E. Dufusseur

& Co., McStea, Volue & Co., but whether within 90 days or not
329 I cannot remember.

The notes were placed in our hands by M'r Partee with the knowledge & consent of M'r Bowman to deliver to all those who would agree to take them and the land and give up the old notes. The notes carried on their face the evidence that they were secured by the deed of trust duly recorded. We agreed to accept for those creditors whom we represented immediately. Some delay took place in our getting the notes, explained in my answers to the direct interrogatories, but on the 11th of Feb'y, 1867, we handed ov'r the new notes to our clients, having personally received their approbation to make the transaction.

I annex hereto as a part of my answer the press copies of our letters of the 11 Feb'y, 1867, to the Canal Bank, to the Union Bank, to the Crescent City Bank, & to Slark, Stauffer & Co., respectively paged in our letter-book 362, 363, 364, & 365, and marked "Exhibit No. 17" in my answer to the 3d interrogatory-in-chief.

I do not know that I understand what is meant by that part of the interrogatory which asks, "Did not W'm B. Partee suggest the
330 name of Robert Bowman as trustee?" I can only say that the first I heard of M'r Bowman's name is to be found in M'r's Partee's first proposition, written in M'r Partee's own hand at New Orleans, dated 19th July, 1866, and handed by him to us, asking of his creditors extention, &c., proposing for the money part to pay 50%, or ½ Jan'y, 1867, 1868, 1869, 1870, & 1871, and to give lands for the other 50%, in which he further says that "in order to secure confidence in the necessary writings, titles, &c., incident to a final close of my proposition, I have selected Judge Robert Bowman, of Yazoo City, Miss., and Judge Wilkinson, to see to the proper execution of the deed of trust on the lands in cultivation and act as trustee, or select proper persons to become so, and also to see to the proper conveyance of the tracts of land to a responsible trustee for the benefit of the creditors for the remaining 50%," &c. That letter I refer to as part of my answer to this question; it is annexed to my answer to the 2nd direct interrogatory, and is marked "No. 3."

I also add as a part of my answer hereto the letter of Mess'rs
331 Wilkinson & Bowman, subsequent to the above writing of Mr. Partee, dated November 21, 1866, and annexed already to my answer to second direct interrogatory, and marked "No. 2"; for further answer to this interrogatory I say that Mr. Partee did propose the terms of settlement, as appears fully by document No. 3, refer'ed to in the answer; he afterwards modified the same, principally by extending the maturities from 1867, 1868, 1869, 1870, 1871 to 1868, 1869, 1870, 1871, & 1872, and gave as a reason, among others, of changing his first proposition, that he wanted the extention so as to enable him to clear off his previous incumberence. This extention corresponds with the deed of trust, and the notes taken by the creditors who gave up the old notes canceled & as extinguished thereby.

In answer to 2 X interrogatory, he says to the 2 X interrogatory: I answer that the law-firm of Hyans & Jones, of which I am the senior member, represented the following creditors, to wit: The New Orleans Canal & Banking Co. for two notes of $5,000.00 each, copies of which I annex hereto, and mark part of my answer, marked Nos. 19 &
332 20. No. 19 was received for collection, as early as the 9th of July, 1866, and was sent the next day to Miles & Epperson, Yazoo City, by us for collection. 2nd. The Crescent City Bank, a note for $4,000.00, a copy of which I annex hereto, marked "No. 18," as part of

my answer; it was placed in our hands for collection on the 29th Sept., 1865, and was sent by us to Miles & Epperson for collection on the 26th June, 1866. 3d. The Union Bank of La., a note for $4,415.00, a copy of which I annex hereto, marked "21," as part of my answer; and, 4th. A draft for $1,000.00, drawn by M'r's Sarah D. Partee, with the consent of W. B. Partee, on and accepted by Rochfort, Brown & Co., to the order of Slark, Stauffer & Co., dated 28 January, 1862, & payable 1st May, 1862. I annex hereto the memorandum thereof taken from the docket of Hyams & Jones, marked "No. 22," as part of my answer to this interrogatory.

In answer to the 3d X interrogatory he says: I have answered the first part of this interrogatory fully in my answer to the 3d direct interrogatory, to which it refers. No formal act of acceptance in writing was ever executed, none being considered necessary. Nor was time consid-
333 ered material, provided the original notes were given up for 50 % in new notes; but whether material or not, the creditors, whom we represented, had consented at an early day, and gave up the old notes, and received the new notes within 90 days of the date of the deed. Mr. Partee considered the reception of the new notes, and the surrender of the old ones by his wife's creditors, sufficient, by his letter to Hyams & Jones, dated Lake Dick, May 28th, 1867, marked "No. 8." In my answer to the 7th direct interrogatory, wherein he says, "Court is in session, & he sees no suspension of the claims of Walworth, McLean, Montgomery, & Lilliman," and anxiously expresses the hope that all will consult their interest by accepting at once, &c. He requested a statement of all th'e who accepted the benefit of the trust-deed. We rec'd this letter on the 3d June, 1867, and responded to it on the same day, & have annexed our press copy to my answer to 7th direct interrogatory, marked "No. 9."

In that answer we sent him a list of the notes that had not been called for, and our views as to the non-accepting creditors, &c. We
334 closed by saying, "We mentioned all this to you when you were here before, and matters have not changed."

In further answer, I say that, not considering any formal deed or act of acceptance further necessary than delivering up the notes themselves of M'r's Partee, none were executed, and therefor' I have none to annex. I have, however, annexed to my answer to part of 2d direct interrogatory a full statement in favor of the names of the creditors mentioned in the deed of trust of the amount of the notes due to each of them, also opposite each name the new notes for 50% that were to be delivered to them in extinction and satisfaction as they gave up the old notes, and finally showing on said list who had received the new notes and given up the old ones, with M'r Partee's final receipt thereon for the return to him of the old notes canceled, and where creditors had taken the 50% notes in lieu thereof, and return to him such of the new notes as the creditors had refused to take or failed to call for, and this delivery was made to him on the 21st of January, 1868, tho' the settlements with the parties accepting had been made nearly a year
335 before by at least those whom we represented.

In answer to the fourth X interrogatory, he says: I have stated in my answer to 5th direct interrogatory that I could not fix the exact time of M'r Bowman's coming to our office with M'r Partee to speak of M'r's Partee's business. I cannot charge my memory with any expression of M'r Bowman's making it imperative on the creditors to accept in writing and within 90 days from the date thereof. I did not nor do I concur in any such manner construction. I considered it was in-

& Co., McStea, Volue & Co., but whether within 90 days or not
329 I cannot remember.

The notes were placed in our hands by M'r Partee with the knowledge & consent of M'r Bowman to deliver to all those who would agree to take them and the land and give up the old notes. The notes carried on their face the evidence that they were secured by the deed of trust duly recorded. We agreed to accept for those creditors whom we represented immediately. Some delay took place in our getting the notes, explained in my answers to the direct interrogatories, but on the 11th of Feb'y, 1867, we handed ov'r the new notes to our clients, having personally received their approbation to make the transaction.

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330 name of Robert Bowman as trustee?" I can only say that the first I heard of M'r Bowman's name is to be found in M'r's Partee's first proposition, written in M'r Partee's own hand at New Orleans, dated 19th July, 1866, and handed by him to us, asking of his creditors extention, &c., proposing for the money part to pay 50%, or $\frac{1}{5}$ Jan'y, 1867, 1868, 1869, 1870, & 1871, and to give lands for the other 50%, in which he further says that "in order to secure confidence in the necessary writings, titles, &c., incident to a final close of my proposition, I have selected Judge Robert Bowman, of Yazoo City, Miss., and Judge Wilkinson, to see to the proper execution of the deed of trust on the lands in cultivation and act as trustee, or select proper persons to become so, and also to see to the proper conveyance of the tracts of land to a responsible trustee for the benefit of the creditors for the remaining 50%," &c. That letter I refer to as part of my answer to this question; it is annexed to my answer to the 2nd direct interrogatory, and is marked "No. 3."

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331 Wilkinson & Bowman, subsequent to the above writing of Mr. Partee, dated November 21, 1866, and annexed already to my answer to second direct interrogatory, and marked "No. 2"; for further answer to this interrogatory I say that Mr. Partee did propose the terms of settlement, as appears fully by document No. 3, refer'ed to in the answer; he afterwards modified the same, principally by extending the maturities from 1867, 1868, 1869, 1870, 1871 to 1868, 1869, 1870, 1871, & 1872, and gave as a reason, among others, of changing his first proposition, that he wanted the extention so as to enable him to clear off his previous incumberence. This extention corresponds with the deed of trust, and the notes taken by the creditors who gave up the old notes canceled & as extinguished thereby.

In answer to 2 X interrogatory, he says to the 2 X interrogatory: I answer that the law-firm of Hyans & Jones, of which I am the senior member, represented the following creditors, to wit: The New Orleans Canal & Banking Co. for two notes of $5,000.00 each, copies of which I
332 annex hereto, and mark part of my answer, marked Nos. 19 & 20. No. 19 was received for collection, as early as the 9th of July, 1866, and was sent the next day to Miles & Epperson, Yazoo City, by us for collection. 2nd. The Crescent City Bank, a note for $4,000.00, a copy of which I annex hereto, marked "No. 18," as part of

my answer; it was placed in our hands for collection on the 29th Sept., 1865, and was sent by us to Miles & Epperson for collection on the 26th June, 1866. 3d. The Union Bank of La., a note for $4,415.00, a copy of which I annex hereto, marked "21," as part of my answer; and, 4th. A draft for $1,000.00, drawn by M'r's Sarah D. Partee, with the consent of W. B. Partee, on and accepted by Rochfort, Brown & Co., to the order of Slark, Stauffer & Co., dated 28 January, 1862, & payable 1st May, 1862. I annex hereto the memorandum thereof taken from the docket of Hyams & Jones, marked "No. 22," as part of my answer to this interrogatory.

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333 ered material, provided the original notes were given up for 50 % in new notes; but whether material or not, the creditors, whom we represented, had consented at an early day, and gave up the old notes, and received the new notes within 90 days of the date of the deed. Mr. Partee considered the reception of the new notes, and the surrender of the old ones by his wife's creditors, sufficient, by his letter to Hyams & Jones, dated Lake Dick, May 28th, 1867, marked "No. 8." In my answer to the 7th direct interrogatory, wherein he says, "Court is in session, & he sees no suspension of the claims of Walworth, McLean, Montgomery, & Lilliman," and anxiously expresses the hope that all will consult their interest by accepting at once, &c. He requested a statement of all th'e who accepted the benefit of the trust-deed. We rec'd this letter on the 3d June, 1867, and responded to it on the same day, & have annexed our press copy to my answer to 7th direct interrogatory, marked "No. 9."

In that answer we sent him a list of the notes that had not been called for, and our views as to the non-accepting creditors, &c. We
334 closed by saying, "We mentioned all this to you when you were here before, and matters have not changed."

In further answer, I say that, not considering any formal deed or act of acceptance further necessary than delivering up the notes themselves of M'r's Partee, none were executed, and therefor' I have none to annex. I have, however, annexed to my answer to part of 2d direct interrogatory a full statement in favor of the names of the creditors mentioned in the deed of trust of the amount of the notes due to each of them, also opposite each name the new notes for 50% that were to be delivered to them in extinction and satisfaction as they gave up the old notes, and final'y showing on said list who had received the new notes and given up the old ones, with M'r Partee's final receipt thereon for the return to him of the old notes canceled, and where creditors had taken the 50% notes in lieu thereof, and return to him such of the new notes as the creditors had refused to ta'e or failed to call for, and this delivery was made to him on the 21st of January, 1868, tho' the settlements with the parties accepting had been made nearly a year
335 before by at least those whom we represented.

In answer to the fourth X interrogatory, he says: I have stated in my answer to 5th direct interrogatory that I could not fix the exact time of M'r Bowman's coming to our office with M'r Partee to speak of M'r's Partee's business. I cannot charge my memory with any expression of M'r Bowman's making it imperative on the creditors to accept in writing and within 90 days from the date thereof. I did not nor do I concur in any such manner construction. I considered it was in-

tended to debar those who did not accept at all. I did not consider that it could in any manner relate to those who actually gave up to M'r's Partee her old notes, canceled & extinguished, and took new notes at 50%, extending over a period of 1 to 5 years thereafter. M'r Partee urged upon us to induce refusing creditors to accept as late as the 28th of May, 1867 (see his letter marked "No. 8), and as late as January 21, 1868, M'r Partee received from us, canceled, from eight of his wife's creditors, including those held by our clients. I do not so under-
336 stand it, neither did I give so narrow a construction to the deed. I considered the giving up of the old notes canceled and taking the new ones a substantial compliance, and if M'r Bowman had intimated a contrary view, I certainly would have given him in writing a formal acceptance for the creditors whom we represented. Under no circumstances did I for a moment contemplate that any formality was required from those who agreed at once and did give up the notes as we did.

In answer to 5th X-interrogatory, he says: I say I do not remember that M'r Bowman spoke of the matter of taxes on the wild lands; probably he may have done so, but he did not say that any were then due, so far as I remember, and if he did or had I think I should have remembered it, and have spoken to the creditors we represented to provide means to do so. They certainly did not expect M'r Bowman as trustee to advance his own means for that purpose, but they certainly did expect him to let them know when they would be due, and
337 their amount & other particulars, so that they could put him in funds to do so. I had no occasion or call to do so. I did not write to him on the subject. I had delivered the notes I took to our clients on the 11th February, 1867, and I never saw the notes afterwards until a year or two ago, and after M'r Partee had failed to pay any of them. We ceased to have the matter in charge after the settlement made in January, 1867. It is true, however, if M'r Bowman had written on the subject to us it would have had our immediate attention, and we would have seen our clients, and would have responded to him at once.

In answer to the 6th X-interrogation, he says: I answer I never had any intercourse, personal or by letter, with M'r Bowman, after the interview in our office, when we informed him whom we represented, and that we accepted the proposition, until after we had heard of the sale of the mortgaged property under some prior lien—after that interview, I repeat that we had no person' or written intercourse. I did not write to Judge Bowman that we or the creditors depended on him to rep-
338 resent their interests. We did not consider it necessary to do so. He held a trust, and we considered it for the benefit of all the parties; and as such he did represent the interests of the owners of the property, as well as of the mortgage creditors. Entertaining as I do these opinions of the plain principles of trusteeship, I would not think it necessary to urge them on that gentleman or any other trustee.

In answer to the 7th X-interrogatory, he says: I say the chartered title of the bank commonly called the "Canal Bank" is the New Orleans Canal & Banking Co. We did, as the attorneys of that bank, send for collection to Mess'rs Miles & Epperson, as associate council, a note for $5,000.00 of M'r's Partee. We also held another note of $5,000.00 against her for said bank, and they were both embraced in the deed of trust. We held none in favor of the Citizens' Bank. We send Mess'rs Miles & Epperson the first note above mentioned for collection, leaving it, as usual, to their discretion whether to institute suit or not. They
339 never informed us that they had obtained judgment; in fact, we

directed them to discontinue proceedings, if they had commenced any, on that note, as well as one for the Crescent Bank, which we had also sent to them, as we had settled the notes with M'r's Partee by new notes, secured by mortgage, on very long credit; and I refer to our letter to him of the 7th May, 1867, filed as No. 7, in my answer to interrogatory 7.

In answer to 8th X-interrogatory, he says: The knowledge we had of it was delivered from Mess'rs Wilkinson & Bowman's letter, which was addressed to us at an early day, 21st November, 1866. That letter & M'r Bowman's subsequent conversation, and M'r Partee's declaration (within M'r Bowman's hearing and apparent acquiescence, at least non-contradiction) that it would be paid with certainty, without affecting, in fact, the creditors, inspired us with confidence that it would be done. I certainly knew, from their conversation and the letters from Mess'rs Wilkinson & Bowman, that a lien existed, and I refer to that letter as
giving us all the information its terms imply.

340 I do not know M'r Stewart, or that M'r Stewart resided in New Orleans, although I don't say he did not. Many persons reside in New Orleans whom I do not know; and I do not know now that he resides here. I do not know him at all. I never offered to pay said judgment; never was asked to do so. If I had been, I would have referred the application immediately to the creditors that we had represented, and to whom the new notes had been delivered.

In answer to 9th X-interrogation, he says: After we took the new notes we did not depend upon Mess'rs Miles & Epperson to collect the debt. The notes were delivered to and received by the creditors whom they and we represented into their own possession, and we expected the notes to be punctually paid in New Orleans to the creditors themselves. They did not rely on Mr. Bowman to collect their debts, but they did rely on him to disclose to them, or give them timely notice of any fact, either
in law or otherwise, that would defeat their claims, and which, on
341 such notice, it would have easily been in their power to prevent. We heard of bad crops, & failures in crops, and believed our clients had been applied to by M'r's Partee for further time or indulgence. We saw M'r Partee in January, 1868, and after the first new note was due, and when we gave him back the notes which had been refused or not called for, and such of the old notes as he had not previously received from us. We heard nothing then of the terms of the deed of trust not having been complied with, &c., but we heard that crops had failed, and people could not meet their obligations. Extentions were constantly made; and when we required from our clients *for* our fees, they said the notes were not paid and we must wait.

I have heretofore in my answers to the direct & cross interrogatories annexed thereto all the letters and correspondence we have on the subject. For further answer neither we or our clients relied on Messrs. Miles & Epperson to collect this debt after the old notes were given up to M'r's Partee, and the new notes were taken and delivered to our clients, to
wit, to the bank above mentioned and to Slark, Stauffer & Co. As
342 we expected M'r Partee to pay them to the creditors themselves, Miles & Epperson were 'lieved, as well as ourselves, of the matter, and no further interest except in the fees which our clients were to pay us, as when the notes were paid to them respectively. I have annexed to my answer to the interrogations & cross-interrogations all my correspondence with these gentlemen. We had no reason to correspond with M'r Bowman; we had given the notes to our former clients. They, we presumed, had given further indulgence to M'r's Partee, as was done to

most agriculturists during 1867 & 1868, and afterwards. As lawyers we were not familiar with the actions of trustees under deeds of trust in Mississippi, as we had no such forms in Louisiana, but we infer from the nature of trusts, that the trustee himself is to guard the interests of all the parties to the trust, and to be active, when necessary, to give timely information of what would destroy it.

In answer to 10th X-interrogatory he says: I cannot possitively that I did or did not make any such suggestion or recommendation, or request. Such action on the trustees' part would have been pru-
343 dent & proper, and doubtless M'r Bowman would have imbraced an opportunity of doing so, if he could. In truth I did not consider the wild lands of much value, and so told my clients. I may have got that idea from M'r Bowman, or possibly from the condition of the country since the war.

H. M. HYAMS.

Sworn to & subscribed before me, at New Orleans, La., this 29th day of July, 1874.

GEO. W. CHRISTY,
Commissioner for Mississippi.

STATE OF LOUISIANA,
City & Paris' of Orleans, ss:

I, George William Christy, a commissioner, resident of the city of New Orleans, La., duly commissioned and qualified by the executive authority and under the laws of the State of Mississippi, do hereby certify that I caused to come before me said H. M. Hyams, a witness for complainant in said suit, now pending in the circuit court of the United States
344 for the southern district of Mississippi in equity, wherein the Canal Bank et al are complainants, and William B. Partee et als. are def'ts, at New Orleans, in the State of Louisiana aforesaid, & he being by me first duly cautioned, sworn, & examined, to speak the truth, the whole truth, and nothing but the truth, in answer to said annexed interrogatories and cross-interrogatories, did give the following depositions: That the answers of said H. M. Hyams were by me reduced to writing in the presence of said witness and carefully read to, and thoroughly understood by, said witness as his deposition in said cause; that he signed the same as his deposition in my presence; that the questions propounded to said witness, and to which he has answered, are the direct and cross interrogatories propounded & consented to in said cause, by signature of counsel (said interrogatories and cross-interrogatories being annexed); that said deposition has in no manner been changed or altered since the same was subscribed by said witness, but that the same has remained in my possession up to the time of seal ing & delivering the same to the post-office, directed to the clerk of said court.

345 In witness whereof I have hereunto set my hand and affixed my official seal, this 29th day of July, 1874.

GEORGE W. CHRISTY,
Commissioner for Mississippi.

Commissioner's fees $36.00. Paid by complainants.
New Orleans, July 29th, 1874.

GEO. W. CHRISTY,
Commissioner for Mississippi.

(Endorsed:) Filed Aug. 4th, 1874. Geo. T. Swann, clerk.

And afterwards, to wit, on the 12th day of Aug'st, A. D. 1874, the

following depositions was filed in the clerk's office of said court, which in the words & figures following, to wit:

(Endorsed:) Filed Aug'st 12th, 1874. Geo. T. Swan, clerk. 158.

PROOF BY DEF'T.

Deposition of R. A. Barkley.

In the circuit court of the United States for the southern district of Mississippi. In equity.

CANAL BANK ET ALS.
vs.
W. B. PARTEE ET ALS.

Interrogatories to be propounded to Richard A. Barkley, a citizen
346 of Warren County, Mississippi, which, together with the answers thereto, when taken, will be read as evidence on the part of the defendant in the above-stated cause:

Int. 1st. Where do you reside and what is your occupation?

Int. 2nd. Do you know W'm B. & Sarah D. Partee, his wife? Were they indebted to you about and previous to the 19th November, 1866? If so, to what amount, and how was the claim evidenced, and what was it for? Did you sue on said claim, and at what time, and in what court? Who were your attorneys and where did they reside? Did you have at that time, viz, 19th Nov., 1866, any other claim against Partee & wife except the one stated, or have you had any other since?

Int. 3d. Were you or not present at the sale of lands of Sarah D. Partee, made by S. M. Dyer, sheriff of Yazoo County, Mississippi, under execution of James Steuart vs. W. B. Partee & wife, in January, 1869? If so, on what day of the week & month was said sale made, how many persons were present; were there few or many? Were you a
347 judgment creditor of W. B. & Sarah D. Partee? For what purpose did you attend said sale?

Int. 4th. Did you bid on said lands? Had you made any arrangement to buy a portion thereof, and what were they and with whom made? Why did you not purchase the same or a portion thereof?

Int. 5th. Did you hear W. B. Partee claim a homestead-exemption on said lands, or any of them? If yes, on which? Was there anything said about a decree for any amount on said lands? Who were the bidders at said sale?

Int. 6th. Were you well acquainted with the said lands of Sarah D. Partee, sold by said Dyer, sheriff? And, if so, taking into consideration all the leins & claims made on said lands on that day, did they bring their market value at that time?

Int. 7th. Please state all you know of said sale of said lands by said sheriff, and what opportunity was offered persons wanting to bid to do so; whether attention was called to said sale by proclamation; whether bids were invited or not; whether bids were cried or not;
348 whether you saw any effort made to prevent competition, and all about it, and whether the lands sold for a fair price, or for too much or too little, and whether they were knocked off to the highest bidder or not?

Int. 8th. If the value of lands generally—of these in particular—was affected by anything, please state what it was, and the manner in which its value was affected, and whether the demand for land in January,

1869, in the region which said lands were was active or otherwise; whether land was rated high or low as compared with prices of land before or after that time.

Int. 9th. How did the price for which said lands were sold by said sheriff compare with what it would have been, in your opinion, considering the lands and all the attending circumstances?

Lastly. Do you know or can you state or set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the sub-
349 ject, to this your examination, or the matters in question in this cause? If you , set forth fully and at large in your answer.

R. BOWMAN,
J. A. P. CAMPBELL,
Solicitors for Defendants.

CANAL BANK ET ALS.
vs.
W. B. PARTEE ET ALS. } 158.

Cross-interrogatories to be propounded to Richard A. Barkley.

1st cross-interrogatory. How far do you reside from the plantation in Yazoo County known as "Lake Dick," "Lysone," "No Mistake," & "Seven Gums"? Did you, at any time, reside on either of said plantations? If yea, on which of them, when, & for what period of time?

2ond cross-int. If, at any time, you resided on either of said plantations, please state in whose employment you were, and by whom you were employed.

3d cross-int. If in answer to 5th direct interrogatory, you an-
350 swer that there was something said about a decree for any amount on the No Mistake lands, or on any of the lands of Sarah D. Partee, you are requested to state whether the statement made at said sale in regard to a decree was definite and positive as to amount, or was it indefinite & uncertain as to amount.

4th cross-int. Were bidders informed positively as to the amount and extent of the incumberences on said lands? Were the statements, which were made at said sale, such as to inform bidders accurately as to the extent and the amount & character of said encumberences? Were the statements which were made at said sale such as to leave bidders in doubt and uncertainty as to the extent and as to the amount of encumberences on said lands?

5th cross-int. Were the statements, which were made at said sale, calculated to produce any want of confidence as to the titles to said lands sold at said sheriff's sale?

6th cross-int. If in answer to the 6th direct interrogatory, you say that taking into consideration all the leins & claims made on said lands on that day they did bring their market value at the time,
351 you are requested to state definately what were all the leins and all the claims made on said lands on that day. In answering this question, state each lein and the amount of it, and each claim and the amount of it, as made on said lands on that day, the day of sale.

7th cross-int. Was anything said on that , at said sale, about a deed of trust embracing said lands made & executed by Sarah D. Partee, in 1866, for the benefit of her creditors? Was anything said on that day, at said sale, about judgment which had been recovered against Sarah D. & W'm B. Partee?

8th cross-int. What effect had been produced by the execution of said deed of trust, and by the conduct of W'm B. Partee in financial matters, on the title of said lands in the estimation of the public? Would parties desiring to bid for said land, at said sale, do so freely and without fear? Did they bid on said lands, at said sale, as freely as if no such deed of trust were in existence, and as freely as persons who do
352 know definitely and accurately what *leins* were on said lands & the amount of said liens.

9th cross-interrogatory. About how many acres of land are there in the whole tract known as the "Lake Dick plantation"; how many acres of cleared land are there in said tract, and about how many acres of wood land? Was the whole of Lake Dick plantation put up by the sheriff and offered for sale in one body? If not, and you say that it was offered in different lots, state in how many lots it was offered, and how many acres, or about how many acres, were in each lot offered.

10th X-int. What would have been the result or amount realized at said sale if the "Lake Dick plantation" had been offered in dif'erent bodies, say lots of one hundred & sixty acres?

11. Cross-interrogatory. Was there any lein or encumberence spoken of on *a* the day of said sale as being claimed on or against the Lake Dick plantation? If yea, what was the nature & amount of said encumberence? Did said encumberance actually exist to your own knowledge?

12th cross-interrogatory. Do 'u consider that $5,200.00 was the fair value of the "Lake Dick plantation" at the time of said sale?
353 Were the time and circumstances under which said plantation was sold such as to cause it to sell for its fair value, and did it sell for its fair value?

13th cross-interrogatory. The deed made by the sheriff to James D. Partee shows that he was the purchaser of the S. ½ of sec. 9; the N. E. ¼ & the S. ½ of the N. W. ¼ & the S. ½ of sec. 10; the W. ½ of N. E. ¼ & N. W. ¼ of S. ½ of sec. 11; all of sec. 14; the N. ½ of sec. 13; the E. ½ of S. E. ¼ of sec. 15; the N. ½ of the S. E. ¼ of sec. 23; the W. ½ of sec. 24; all in township 9, range 4 west; in all about 3,280 acres. Now you will please state how many plantations this embraced and give the name of each.

14th cross-interrogatory. Were the lands which are described in 13 cross-interrogatory put up and offered for sale by the sheriff in one body, or were said lands put up and offered in dif'erent lots or bodies? If put up and offered in different lots & bodies, in how many lots or bodies were the' offered & sold; how many acres were in each lot offered?

15th cross-interrogatory. When the lands described in the 13 cross-interrogatory was offered for sale, was there any statement made
354 about any incumberance? If yea, what was the amount of said incumberance? To which trust did it apply.

16th cross-interrogatory. When the lands described in the 13 cross-interrogatory were put up and offered for sale, did bidders have an op'ortunity & the priviledge of bidding for any part of the 3,280 acres without being compelled to buy also the tracts on which the incumberance was claimed?

17th cross interrogatory. Was any op'ortunity offered to you or to others for buying any part of said lands described in the 13 cross-interrogatory on which there was no incumberence claimed & set up?

18th cross-interrogatory. If the lands bought by James D. Partee had been offered in three lots or parcels, one imbracing the "No Mistake plantation," what would have been the effect as to the result of the sale, or the total amount realized from said sale?

19th cross interrogatory. Do you consider that the $550 00 was the fair value of the 3,280 acres of land bought by James D. Partee at the sheriff sale refer'ed to in the direct examination? Would or would
355 not one-third of the lands bought by him have rented in 1869 for greatly more than James D. Partee bid? For what sum would these lands have rented in 1869?

20th cross-interrogatory. What number of acres of cleared land was there in the body of land bought by James D. Partee, and described in the 13th cross-interrogatory?

21st cross-interrogatory. Did you at said sale hear W'm B. Partee or Sarah D. Partee, his wife, or any one else for them set up a claim of homestead in either of said plantations? If so, state fully what was said, and in which plantation was said claim of homestead made?

22nd cross-interrogatory. Was William B. Partee and James D. Partee present at that time; was said announcement made in a distinct and audible tone by the sheriff so that it could be plainly heard by them; did they in any manner object to said an'ouncement; did they not tacitly assent to or acquiesce in said an'ouncement?

356 23 cross-interrogatory. Did you attend said sale for the purpose of bidding on said plantation or either of them? If yea, and you did not bid, state fully why you did not bid?

24th cross-interrogatory. Was or was not the announcement of the claims of the homestead on the No Mistake place, and not of the legacy, the principal reason why you did not bid; and what difference in value did you consider the place with the homestead carved from it, and the place without the homeste'd carved from it?

25th cross-interrogatory. Did you hear on the day of sale any claim of homestead set up in the lands bought by James Stewart as the "Lake Dick plantation"?

26th cross-interrogatory. Did or did not W'm B. Partee & Sarah D. Partee reside together on said lands for some time, one or two years or more, after sale of said lands as they did before? Were or were not said plantations carried on and conducted after said sale in the same manner as they were carried on and conducted before the sale? Did or did not W'm B. Partee take the same interest and authority on said plan-
357 tation after the sale as that he took before said sale?

27th cross-interrogatory. Did you see W'm B. Partee and James D. Partee at the sale? If so, how far were you from them?

28th cross-interrogatory. Is it or is it not a fact that after said sale W'm B. Partee and Sarah D. Partee set up & claimed their homestead in the "Lake Dick plantation"?

29th cross-interrogatory. Are not said W'm B. Partee and Sarah D. Partee still at this present time defending a suit instituted in the circuit of Yazoo County, Mississippi, by James Stewart, instituted for the purpose of ejecting said Sarah D. Partee & W'm B. Partee from the "Lake Dick" plantation?

A. M. HARLOW,
W. L. NUGENT,
For Complainant.

Notice and commission are waived and concent given for the examination of the witness without delay on direct & cross-interrogatories, subject to exception for competency & relevancy.

A. M. HARLOW.

JULY 22d, 1874.

358 The answers of R. A. Barkley to the interrogatories & cross-interrogatories propounded to him in the case of Canal Bank et al. vs. W. B. Partee et al., in the circuit court of the United States for the southern district of Mississippi.

Witness being first duly sworn answers & says:

Ans. 1st. I now reside in Warren County, Mississippi. I have lived in Yazoo County from 1853 to 1870. I moved to Warren County in 1872.

Ans. 2. I do know W'm B. & Sarah D. Partee. They were indebted to me about & previous to the 19th November, 1866, and they are still indebted to me. I hold a judgment against them for about $1,740.00. It was evidenced by promis'ory note given by W'm B. Partee, signed as agent for Sarah D. Partee. It was for services rendered as overseer on their plantations. I did sue on said claim in the circuit court of Yazoo County, Mississippi, in 1865. Miles & Epperson my attorneys. The' reside in Yazoo City, Miss. I had no other claim against W'm B. & Sarah D. Partee, and I had none since and I don't want any.

359 Ans. 3d. I was present at the sale of lands of Sarah D. Partee made by S. M. Dyer, sheriff of Yazoo County, Mississippi, under execution in favor of James Stewart vs. W. B. Partee & wife in January, 1869. I do not remember the day of the week nor the month the sale was made. There were good many persons present at the sale. I cannot say the exact number. I was a judgment-creditor of W'm B. & Sarah D. Partee. I attended the sale for the purpose of trying to get the money on my judgment.

Ans. 4. I did not bid on said land. I had made no arrangement to b'y any of said land. The reason why I did not bid I was not able to pay the $8,000.00.

Ans. 5th. I did hear W. B. Partee claim a homestead exemption on said lands through the sheriff when he made sale. He sold the land subject to S. D. Partee's exemption. The sheriff did say something about a' $8,000.00 decree. James D. Partee was their bidder.

Ans. 6th. I was well acquainted with the said lands of said S. D. Partee sold by said S. M. Dyer, sheriff. The lands did not bring their value at the time.

360 Ans. 7. The sale was published in a newspaper that the sale would come off a certain day, and the advertisement was read out by the sheriff on the day of sale, and it was free to every one to bid that wanted to, and attention was called to said sale by promulgation, and all bids were cried. I never saw any ef'ort made to prevent competition. The lands were not sold for a fair price. It sold for below its value. It was knocked off to the highest bidder. It was these lands that were affected in particular. I do not know why it did not bring its value. The demand for lands in January, 1869, in the region which said lands were sold was not active. Land was rated low, but this land was sold lower than lands was rated, hills or bottom. Hill lands sold for more than said lands brought.

Ans. 9. I think the land was worth five times as much as it was sold for. I do not know anything more only the lands sold too low.

Cross-interrogatories to be propounded to Richard A. Barkley.

Ans. 1st. I now live about 8 miles from "Lake Dick," "Tyrome," "No Mistake," & Gum Grove. I did live on "No Mistake" plantation. I lived on said place in 1861 and a part of 1862.

361 Ans. 2. I was in Sarah D. Partee's employ, hired by W'm B. Partee, agent for S. D. Partee.

Ans. 3d. The statement made at said sale, in regard to a decree, was definate and positive as to the amount.

Ans. 4. Bidders were informed positively as to the amount and extent of the incumberences on said land. I think the statements which were made at said sale was such as to inform bidders accurately as to the extent and amount and character of incumberences. I think every one understood the terms and amounts and incumberences on said land.

Ans. 5. The statements which were made at said sale was not calculated to produce any want of confidence as to the title of said lands sold at said sheriff's sale.

Ans. 6. The lein and claim on the land were the homestead and the $8,000.00 decree.

Ans. 7. I do not recollect anything said about a deed of trust executed by Sarah D. Partee in 1866 for the benefit of her creditors. I think the lands was sold under a judgment in favor James Stew-
362 art, and so stated on that day.

Ans. 8. I know nothing about any deed of trust. Parties wishing to bid, did so without any fear, so far as I know.

Ans. 9. There was in the whole tract, known as "Lake Dick" plantation, about or near 700 acres of land. I suppose there is near 250 acres of cleared land on said "Lake Dick plantation." I suppose there was 350 acres of wood land. The whole of Lake Dick plantation was put up and offered for sale by the sheriff in one body.

Ans. 10. I think that if the lands on Lake Dick plantation had been sold in smaller boddies it would have brought more money or a better price, but cannot the exact amount.

Ans. 11. I never heard of any lein or encumberance spoken of on the day of the sale as being on or against the Lake Dick plantation. There was no incumberences to my knowledge.

Ans. 12. I do not consider that $5,200.00 more than half the value of the Lake Dick plantation at the time of said sale. The time and circumstances under which said plantation was sold was not such
363 as to make bring its full value. It did not sell for its value.

Ans. 13. James D. Partee purchased these separate plantations, "No Mistake," "Tyrone," & "Seven Gums,"

Ans. 14. All the purchase of James D. Partee was put up in one body and offered for sale, & was sold in one body.

Ans. 15. The sheriff did not call the places by any name, except it was all sold as No Mistake. The amount of incumberance was the $8,000.00 decree and the homestead. It applied to the whole body of land known as "No Mistake," Tyrone, & Seven Gums.

Ans. 16. Bidders had no chances only to buy the whole body of land, 3,280 acres.

Ans. 17. There never was any op'ortunity offered to me or to any other persons to buy any part of said lands without taking 3,280 acres, and we were all too poor to buy that amount and pay for it.

Ans. 18. If the lands bought by James D. Partee had been offered in three lots or parcels, one embracing the No Mistake plantation, I think the result of the sale would realised several thousand dollars more than it did.

Ans. 19. I do not consider $550.00 was a fair value of the 3,280 acres of land bought by James D. Partee at the sheriff's sale. I think
364 ⅓ of the land would have rented in 1869 for more than James D. Partee pa'd for it. I think those lands would have rented in 1869 for $6,000 or more.

Ans. 20. I think there is between 1,500 & 2,000 acres of cleared land on the lands sold, and purchased by James D. Partee.

Ans. 21. W'm D. Partee claimed a homestead on "No Mistake," and so promulgated by the sheriff on the day of sale.

Ans. 22. W'm B. Partee & James D. Partee was present at the time the announcement was made in an audible tone by the sheriff. I never heard any objection to publication of the sale in any manner from any one.

Ans. 23. I did attend said sale for the purpose of bidding on lands. I did not bid because it was offered in too large boddies.

Ans. 24. My reason was the land was put up in too large bodies.

Ans. 25. I did not know on the day of sale of a claim set up in the lands bought by James Stewart.

Ans. 26. W'm B. Partee and Sarah D. Partee did reside on the lands for some time. I do not know how long. I do not know how the plantation was carried on after the sale.

365 Ans. 27. I did see W'm B. Partee & James D. Partee at said sale. They were just as close as they could conveniently be together. I was about 10 feet from them.

Ans. 28. I do not know whether they set up any claim to Lake Dick plantation after the sale.

Ans. 29. I do not know anything about the suit of James S. Stuart vs. Sarah D. Partee & W'm B. Partee at this time.

R. A. BARKLEY.

STATE OF MISSISSIPPI,
Yazoo County:

I hereby certify that after the witness R. A. Barkley was duly sworn, he was carefully examined by me upon the interrogatories & cross-interrogatories, and their answers were written down by me and subscribed in my presence, and acknowledged by him to be correct.

JESSIE E. BELL,
U. S. Commissioner, Southern District Miss.

(Endorsed:) Filed Aug. 12, 1874. Geo. T. Swann, clerk.

366 And afterwards, to wit, on the 12th day of August, A. D. 1874, the following depositions was filed in the clerk's office of said county, which is in the words & figures following, to wit:

(Endorsed:) Filed August 12th, 1874. Geo. T. Swann, clerk.

Deposition of James D. Partee.

In the circuit court of the southern district of Mississippi (185). In equity.

UNITED STATES:

CANAL BANK ET AL.
vs.
WILLIAM B. PARTEE ET AL.

Interrogatories to be propounded to James D. Partee, a citizen of Yazoo County, and a witness for defendants, whose deposition is to be read on trial of above state case, viz:

Int. 1st. Were you acquainted with the affairs of Sarah D. Partee &

William B. Partee during the years of 1867, 1868, & 1869? If so, state what mules, horses, cattle & other personal property they had during that period.

Int. 2. Are you acquainted with the lands in Yazoo County, Miss., formerly owned by Sarah D. Partee, and sold at sheriff's sale in January, 1869, in said county, under a judgment in favor of James
367 Stuart, against said Sarah D. Partee & husband? How are those lands known and called? Who cultivated, managed, & controlled said lands in the year 1866, and each year since? Who owned the mules, farming implements, and other personality on said land during this period? Please be specific in answer to last question, and state your means of knowledge on the subject.

Int. 3d. If you answer that you cultivate', managed, and controlled said lands, or any of them, during said period, or any part of it, either alone or in conjunction with another, *or* owner or lessee, and if as lessee from whom you rented, and what the contract was, and with whom made, and all about it.

Int. 4. Did you find farming profitable; did you make money on said lands; how much; what was the result of the operations of the several years mentioned on said lands; was it favorable or not; was the result gain or loss?

Int. 5. One whose account, in whose name, and for whose benefit were planting operations carried on upon said lands during said years? If in the name and for account of a partnership, during all or any of
368 the time, state the name of the firm & the persons composing it. Please give full & specific answers to these questions about the management of the plantations, the years, the persons, the nature of the business operations, and all that is necessary to a full comprehension of the subject inquired about.

Int. 6. What pecuniary reso'rces had you, or yourself & brother, during the time above inquired about? Where did you get money to buy mules, implements, & other necessary supplies? Did you receive any from any persons other than merchants in the way of advance? When & in what way? What did you do with the money thus received?

Int. 7. Did you own any land prior to your purchase at said sheriff's sale? Had you sold such lands; had you received payment for it; had the contract been performed or rescinded, and on what terms, and what sums of money did you, or yourself & brother, receive from this resource, & at what time and to what use did you, or you & him, if both, make of this money?

Int. 8. Who was your factor during this planting operation inquired about; from whom did you obtain aid, if any, in the way of ad-
369 vances to carry on your agricultural operations during said period? Were you indebted to anybody for advances and supplies at the time of a sale by F. Barksdale, trustee, under a deed of trust executed by yourself & wife to him, which sale was in 1872? What was the conditions of that deed of trust. What was the amount of your indebtedness to the beneficiaries in said deed of trust at the time of said sale; was any part of said indebtedness for account of others? Was said indebtedness made up in whole or part of any debt due by Sarah D. Partee or William B. Partee? If so, state what part. When did you commence to trade or deal with Nelson, Lamphier & Co., or any firm of which S. O. Nelson and J. S. Lamphier were partners? What was the character of your dealings with them? How, if at all, did you secure them? If you say you executed a deed of trust, say when and for what purpose, on what account and on what considerations.

Int. 9. Where you now reside, in what business are you engaged; what connection, if any, have you with any of said lands heretofore spoken of? In whose employ are you? Describe fully the
370 capacity in which you are engaged in connection with any of said lands; how long have you been thus engaged, and at whose instance, and all about it.

Int. 10. Where do William B. Partee and Sarah D. Partee reside? When did they cease to live on the lands bought by yourself and James Stuart severally at the execution sales? Did said Sarah D. or William B. Partee despose of any homestead exemption on any of said lands? To whom has there been any controversy about said homestead exemption? With whom? Of what character?

Int. 11. What was the state of feeling between James Stuart and William B. Partee & Sarah D. Partee, his wife, before and at the time of the said sheriff's sale of lands under Stuart's judgment? Was the feeling of Partee & wife toward James Stuart cordial or otherwise about that time; and if there was alienation what occasioned it?

Int. 12. Were you present at the sale under execution in favor of James Stuart against Sarah D. Partee and William B. Partee, made by the sheriff of Yazoo County under process of the circuit court of
371 said county in January, 1869, of certain lands, as the property of said defendants? Were there few or many persons present? Did you bid at said sale for any of said lands? Did you become the purchaser of any of said lands? If so, of which and at what sum? Did you pay the amount of your said bid? When? To whom? Why did you not pay your bid to the sheriff? When did you receive a deed for said lands from the said sheriff, if you did receive a deed thereof? On what day was said sale made?

(The last two subdivisions of this interrogatory are objected to by the complainants.)

Int. 13. What agreement, understanding, or arrangement of any sort did you have, or know anybody to have, with James Stuart or his attorneys or agent, or anybody else, as to the purchase of said lands of Sarah D. Partee at said sheriff's sale? Do you know of any agreement or understanding of any sort had with James Stuart, his agent or attorneys, about said lands or any of them? If any such, state it fully.

Int. 14. What interest, besides a homestead exemption, had said Sarah D. Partee and W. B. Partee, her husband, in said lands or any of them after said execution sale?

Int. 15. State fully all you know about said execution sale in
372 January, 1869; whether fairly conducted or not; whether there was any hinderance to bidding or any combination to prevent bidding, or anything unusual or improper in connection with said sale on the part of anybody; and, if there was, state fully.

Lastly. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination or the matters in question in the cause? If yea, set forth the same fully and at large in your answer.

R. BOWMAN,
J. A. P. CAMPBELL,
Solicitors for Complainants.

373 Cross-interrogatories to be propounded to James D. Partee.

1st cross-interrogatory. What is your relation to Sarah D. Partee

and William B. Partee? With whom did you live and where did you live during the years 1866, 1867, 1868, 1869, 1870, and 1871, & 1872?

2nd cross-interrogatory. How many plantations were sold by the sheriff in January, 1869, under a vendi issued on a judgment in favor of James Stuart against William B. Partee and Sarah D. Partee? Give the name of each plantation thus sold, and state who bought them.

3d cross-interrogatory. State what number of mules, horses, cattle, and what other personal property were on said plantation in the years 1866, 1867, 1868, and 1869.

4th cross-interrogatory. If in answer to the second direct interrogatory you say that the mules, farming implements, and other personality on said lands during the time inquired about belonged to yourself &
374 brother, you will please state what was the cost of said mules, farming implements, and other personality. State when you bought said mules, from whom did you buy them, giving date of each purchase, and the price, how many were bought in 1866 and how many each year afterwards up to and of the year 1868; who paid for each lot of mules bought; how much money did you pay for farming implements, or you & your brother, in the year 1866 and each year afterwards up to the end of 1868?

5th cross-interrogatory. If, in answer to second direct interrogatory, you say that said lands were cultivated, managed, & controlled in the year 1866, and each year since, by you and your brother, you will lease state how and in what way you & your brother obtained the management & controll of said lands; what caused them to be placed in your management & controll? What an'ual rent were you to pay, or what an'ual rent did you & your brother agree to pay? What an'ual rent did you actual'y pay each year? To whom did you pay it?

6th cross-interrogatory. Where was your father during the time refer'ed to in the second direct interrogatory, and what sum did you
375 and your brother agree to pay him for his services in manageing and superintending the business on said places?

7th cross-interrogatory. In January, 1869, when you bought about 3,280 acres of land, at the sheriff's sale made by S. M. Dyer, your bid being $550.00, where did you obtain the money, and from whom did you obtain the money, to enable you to pay said bid? Did you or did you not borrow the money on the day of said sale or soon afterwards?

8th cross-interrogatory. If, in answer to the second direct interrogatory, you say that said lands were managed, cultivated, & controlled by you & your brother in 1866, and in each year since, you will please state what amount of money you and your brother had to enable you to do this, without including any which you may have received from your father or your mother.

9th cross-interrogatory. Where were your father & mother living in 1866, and each year subsequently up to the time when this suit was instituted?

10th cross-interrogatory. Did you & your brother, or either of
376 you, pay rent to your mother or to your father, as her agent? If yea, for what years did you pay, and how much did you pay each year?

11th cross-interrogatory. If you say that you and your brother did not pay rent, or that you paid for part of the time only, state why you did not pay rent. Are you still indebted to your mother for said rent? Or if you have been released from the obligation to pay rent, state when & why you were released, and what amount of rent was due previous to the agreement to release you.

12th cross-interrogatory. If, in answer to the seventh direct interrogatory, you say that prior to the purchase made by you at the sheriff's sale, in January, 1869, that you had owned a tract of land, and that you had sold said tract to C. D. Bonny, and that the heirs of C. D. Bonny, after his death, gave you $8,000.00, or any other sum, to rescind the sale, you will state whether you did or did not borrow the money. Had you, when the sale was rescinded, previously paid back the sum which you had borrowed; or did you use the sum received from the heirs of C. D. Bonny to pay back the amount which you had
377 borrowed to pay for said tract sold by you?

13th cross-interrogatory. After said sale had been rescinded, what did you do with the tract which you had sold to C. D. Bonny? Who now owns & has possession of said tract which you had sold to Bonny?

14th cross interrogatory. If, in answer to the 10th direct interrogatory, you say that there has been a controversy about the homestead exemption claimed by your father & mother, you will please state whether it is or is not the fact that James Stuart instituted suit by action of ejectment to gain possession of the Lake Dick plantation. Is it or is it not the fact that said suit is still pending in the circuit court of Yazoo County, Miss., and is still undecided and undetermined? Is it or is it not the fact that in said action of ejectment Sarah D. Partee and W'm B. Partee, rely in part as a defense upon their claims to a homestead exemption in the Lake Dick plantation?

15th cross-interrogatory. If you say that Sarah D. Partee and W. B. Partee have sold or disposed of their homestead, you will
378 please state at what price they sold. When they sold, in which place is said homestead that you here refer to, and has the whole consideration been paid; if not, how much has been paid?

A. M. HARLOW,
W. L. NUGENT,
For Complainants.

Notice & commission are waived and consent given that the deposition of the witness may be taken without delay, subject to exceptions for competency and relevancy.

A. M. HARLOW.

July 22nd, 1874.

And afterwards, to wit, on the 12th day of August, A. D. 1874, the following was filed in the clerk's office of said court, which is in the words & figures following, to wit:

(Endorsed:) Filed August 12th, A. D. 1874. 185. Geo. D. Swann.

The answers of James G. Partee to the interrogatories and cross-interrogatories propounded to him in the case of Canal Bank et als.
379 vs. W. B. Partee et als., in the circuit court of the United States for the southern district of Mississippi.

The said witness, being first duly sworn, answers & says:

Ans. 1st. I was acquainted with the affairs of Sarah D. Partee and her husband, William B. Partee. To the best of my recollection they had about 25 head of cattle, four mules & no horses. They had no other personal property, that I know of, at the time, 1867, 1868, & 1869.

Ans. 2nd. I am acquainted with the lands in Yazoo County, Miss.,

formerly owned by Sarah D. Partee and sold at sheriff's sale in January, 1869, in said county, under a judgment in favor of James Stuart against Sarah D. Partee & husband. Those lands are known and called "No Mistake," "Lake Dick," "Tyrone," and "Seven Gums" plantations. William Partee, j'r, William B. Partee, s'r, and myself had control and managed and cultivated said lands in 1866, and I am still in possession of said lands. William Partee, j'r, & myself owned the farming implements & all the mules, except the four that was owned by Sarah D. Partee and William B. Partee. I was personally interested in the business, is the means of knowledge on the subject.

380 Ans. 3. William Partee, j'r, and myself was the sole owners of said lands; cultivated and managed said lands.

Ans. 4th. I did not find farming profitable. I did not make money on said lands. The result of the operations of the several years mentioned on said lands were not favorable; the result was disastrous.

Ans. 5. The planting operations was carried on during said years for the benefit of William Partee, j'r, and myself. The style of the firm was Partee & Brother. William Partee, j'r, and myself, composed the firm.

Ans. 6th. We had a credit with S. O. & T. A. Nelson, during that time. We got money from S. O. & T. A. Nelson to buy mules, implements, & supplies. We did not receive any money from any one but merchants. I received no money only for planting purposes.

Ans. 7. I did not own any land prior to the purchase at said sheriff's sale. I never sold any land.

Ans. 8. S. O. & T. A. Nelson was our factors during that period, and we obtained aid from them. I was indebted to other parties at the time of sale by F. Barksdale, trustee. The conditions of the deed of trust was to secure advances made by S. O. & T. A. Nelson, and Nelson,

381 Lamphier & Co. The amount of the indebtedness was about thirty five thousand dollars. The whole amount of indebtedness was for William Partee, j'r, & myself. Said indebtedness was not made up in whole or in part of any debt due by Sarah D. Partee or William B. Partee. We commenced to trade with Nelson, Lamphier & Co. from the commencement of our planting operations. We got advances to carry on the plantations. We gave them a deed in trust after the sale of 1872. We gave a deed in trust for the purpose of securing them for the debt due them.

Ans. 9. I now reside on "Lake Dick," Yazoo County, Mississippi. I am a planting. I am a planter, and I am on my own land. I am in my own employ. I have been in business for myself since 1866.

Ans. 10. William B. Partee and Sarah D. Partee resides in S't Louis, Mo. They ceased to live on the lands bought by James Stuart in 1871 & 1872. Sarah D. Partee & W'm B. Partee did not dispose of any homestead exemption on any of said lands, but give me a quitclaim if there should be a homestead ever declared on "No Mistake plan-

382 tation." There has been a controversy about the homestead exemption on Lake Dick, with Stewart. Stuart brought suit.

Ans. 11. There was no bad feelings between James Stuart and William B. Partee & Sarah D. Partee at the time of said sheriff's sale of land under Stuart's judgment; so far as I know there was no bad feelings of Partee & wife toward James Stuart.

Ans. 12. I was present *I was present* at the sale under execution in favor of James Stuart against Sarah D. Partee and William B. Partee; there were a great many persons present; I did bid at said sale. I did become the purchaser of some of said lands. I purchased No Mistake

and Tyrone plantations. I paid five hundred & fifty dollars over and above a decree in the chancery court in favor of C. Todd. I paid the money at the time of the sale to Judge R. Bowman by the order of the sheriff. I received a deed to said lands about 10 days afterwards. I do not know what day said sale took place.

Ans. 13. I know of no agreement or understanding with James Stuart or his attorneys, or agent, or anybody else, as to the purchase
383 of said lands of Sarah D. Partee at said sheriff's sale.

Ans. 14. Sarah D. Partee and William B. Partee had no interest in any of said lands except the homestead exemption.

Ans. 15. The sale was fairly conducted; there was no hinderance to bidding.

Cross-interrogatories:

Ans. 1st. I am a son of Sarah D. Partee and William B. Partee. Sarah D. Partee and William B. Partee and myself lived together at "Lake Dick plantation" in and during the years 1866, 1867, 1868, 1869, 1870, 1871, & 1872.

Ans. 2. There were three plantations sold by the sheriff in January, 1869, "No Mistake," "Tyrone," & "Lake Dick." I bought No Mistake & Tyrone, and James Stuart bought a part of Lake Dick.

Ans. 3. There were, I suppose, about ninety-five head of mules on said plantation during the years 1866, 1867, 1868, 1869.

Ans. 4. The mules on said plantation cost us about one hundred and twenty-five dollars p'r head. I cannot say what the farming implements was worth. I bought some of the mules when we first commenced farming, and some every year since. I bought them from various par-
384 ties. I do not remember the date of purchase; I do not remember how many was bought 1866; I know we bought 95 mules during those years, but do not remember the different dates of purchase. My brother & I paid for those mules through our merchants. It is impossible for me to say what the farming implements cost, keeping no account.

Ans. 5. Brother and myself obtained the management and the conroll of said lands by purchase; we did not pay any rent.

Ans. 6. My father was in Yazoo County, Mississippi. We never did agree to pay him anything for his services.

Ans. 7. I obtained $550.00 that I paid on the land from my merchant in New Orleans, La. I did not borrow the money on the day of the sale, nor afterwards.

Ans. 8. Said lands were managed and controlled by us in 1868, and each year since, by a credit in New Orleans. We never received any money from W'm B. Partee or Sarah D. Partee to enable us to carry on the farming interest.

Ans. 9. W. B. Partee and Sarah D. Partee lived in Mississippi and Missouri in 1866, and each year subsequently up to the time when this suit was instituted.

Ans. 10. We never did pay W. B. Partee or Sarah D. Partee
385 any rent or did not pay any one as their agent.

Ans. 11. The reason why we did not pay rent, we owned the was our property.

Ans. 12. I did not own any land prior to the purchase of "No Mistake" & Tyrone. My brother & myself entered into an agreement with C. D. Bonny to purchase his plantation, and after his death his heirs compromised with us for $8,000.00 for us to release them. We never paid for the land. We paid $1,000.00 to confirm the trade. We bor

rowed one thousand dollars from W'm B. & Sarah D. Partee. We paid W. B. & S. D. Partee one thousand dollars out of the compromise money.

Ans. 13. We never sold any land to C. D. Bonny.

Ans. 14. James Stuart did institute suit by action of ejectment to gain possession of the Lake Dick plantation; the suit is not pending now in the circuit court. I do not know what plea S. D. & W. D. Partee relied on in the said suit.

Ans. 15. W. B. Partee and S. D. Partee never sold their homestead to any one, and are now in possession of it.

JA'S D. PARTEE.

386 THE STATE OF MISSISSIPPI,
Yazoo County:

I hereby certify that after the witness, James D. Partee, was duly sworn he was carefully examined by me upon the interrogatories and cross-interrogatories, and their answers were written down by me and subscribed in my presence and acknowledged by him to be correct.

JESSEE E. BELL,
U. S. Commissioner, Southern District of Miss.

386½ In the circuit court of the United States for the southern district of Mississippi. In equity.

CANAL BANK ET ALS. }
vs. }
W'M B. PARTEE ET AL. }

In this cause it is agreed that the clerk may open and publish all the depositions taken in this cause, as well for the defendant as for complainant.

Sept. 22, 1874.

W. L. NUGENT,
Sol. for Complainant.
J. A. R. CAMPBELL,
Sol. for Defendant.

(Endorsed:) Filed Sept 25th, 1874. Geo. T. Swan, clerk.

387 185. In equity.

And afterwards, to wit, on the 17th day of August, 1874, the following depositions of Heth & others was filed in the clerk's office of said court, which is in the words & figures following, to wit:

(Endorsed:) Filed August 17th, 1874. Geo. T. Swan, clerk.

In the circuit court of the United States, southern district of Mississippi.
In equity.

Deposition of John T. Heth and others.

CANAL BANK ET ALS. }
vs. }
WILLIAM B. PARTEE ET ALS. }

Interrogatories to be propounded to John T. Heth, Edward Drenning, S. M. Dyer, Jno. C. Prewitt, William R. Miles, N. G. Nye, Robert S. Hudson, citizens of Yazoo City, Mississippi, whose depositions are to be read as evidence for defendants in the above-entitled cause, that is to say:

Interrogatories to John T. Heth, viz:

Int. 1st. Who was sheriff of Yazoo County, Mississippi, during the

years 1866, 1867, 1868, & 1869? Who was deputy sheriff during said years? If you answer that you were, state how you were consti-
388 tuted such. By whom & by what way were you appointed such deputy, and when? Was your appointment made in writing or without writing? If in writing, where is that writing now? Annex a copy of your appointment, if in writing. Did you take any oath or oaths as deputy sheriff? If so, annex a copy of the oaths as well as the appointment. If there is any reason for not appending copies, as requested, state what it is, and if no evidence of your appointment & qualification can be obtained by you, state what efforts you have made to obtain such evidence, and why you have not been able to do so; and if you shall answer that your appointment was in writing, and your qualifications, but that, after diligent search and inquiry, you have not been able to obtain such writing, state all the facts, and the contents and the dates of such instrument, if they ever existed, as fully and particularly as you can remember them.

Int. 2. Do you know of any personal property in Yazoo County, Mississippi, owned or possessed by Sarah D. Partee or William B. Partee in the years 1867 & 1868? If yea, in what did it consist? Did you, as deputy sheriff of Yazoo County, levy an execution from the
389 circuit court of said county on a judgment in favor of James Stuart against Sarah D. Partee and William B. Partee on certain lands as the property of said Sarah D. Partee? If yea, why was such levy made? Why was not a levy made on personality? Did not said defendant in said execution have personality? To whom did the mules, cattle, farming implements, and other personality, if any, belong? Who had them in possession, if any such? Do you know anything of James D. Partee and William Partee in connection with said lands or any personality on them? If so, what?

Int. 3d. What became of the levy of the execution spoken of above? Were any further proceedings had under said execution and levy, and what? Were those lands ever sold to satisfy said judgment? If so, when, by whom, and by what process? If you answer that said lands, or any part of them, were sold under process of said judgment, state particularly the day of the week and month, as well as the year, of said sale, and by what person it was made, and on what notice it
390 was made, and where and under what circumstances, and whether any other public sales were made at the same place and on the same day, and whether persons were in attendance on said sale of said lands, and what number of persons, whether many or few.

Int. 4. What price did said lands bring at said sale? How did the price bid compare with the then market-value of the lands? Was the sale a public one? Were there more bids than one? Did all have an op'ortunity to bid? State fully what op'ortunity was given to persons desiring to bid for the lands at said sale. And if you know of any hinderance, state it fully.

Int. 5. Does the return of the sale of the lands above inquired about, made on a venditioni exponas in the case of Stuart vs. Sarah D. Partee and William B. Partee, above spoken of, show the true date of the sale of said lands under said process? The return refer'ed to shows that the sale was on the 5th day of January, 1869, and the deed by the sheriff to James Stuart of these lands so sold under said process recited the sale as made on the 5th of January, 1869, and you are requested to
391 state if said 5th day of January, 1869, is the true date of said sale. And, if not, what is the true date, and how the return and the deed were made to fix the 5th day of January, 1869, as the time?

Explain this fully, if you can, and state the time when the sale was made, and how you are enabled to fix the time now.

Interrogatories to Edward Dunning, viz:

Int. 1. Where did you reside in the years 1868 & 1869, and what was your occupation then and now?

Int. 2. Were you present at the sale of lands by the sheriff of Yazoo County, Mississippi, in January, 1869, under process upon a judgment in the circuit court in said county, in favor of James Stuart against William B. Partee and Sarah D. Partee? If yea, state the day of the week and the month on which said sale was made, as well as the place and circumstances.

Int. 3. Were other sales made by said sheriff on said day? And of what? Were persons other than yourself in attendance at said
392 sale? Were the persons present, if any, many or few? State fully.

Int. 4. How many persons were present at said sale of the lands of Partee? Do you recollect the names of persons to any extent? Do you remember if Richard Barkley was there, or N. G. Nye, or both of them? Do you know whether said Barkley was a creditor of Partee & wife, or either, at the time, and how was he a cred'or, if he was such; and what claim or interest, if any, he had; and why he was present at said sale? What part he took in it? Do you know what led N. G. Nye to be there, if you say he was there? Do you know of any claims against Sarah D. Partee and William B. Partee, or either, in which said N. G. Nye was interested or concerned; if so, in what capacity he was thus concerned, and what shape such claims were at that time?

Int. 5. Were you the party in whose favor a decree had been rendered by the chancery court of said Yazoo County in a cause in which Edward Dunning was complainant, as administrator of Christopher Todd,
393 deceased, and William B. Partee and Sarah D. Partee, his wife, were defendants, which decree was a specific lien on said land of Sarah D. Partee, known as "No Mistake" plantation, before said execution sale hereinbefore inquired about; and if you are the person who was complainant in said cause, state what was the sum due by said decree at the date of said execution sale, and if any part of said decree had been paid before said execution sale, how much, and what sum was then due and unpaid, if any.

Int. 6. At said execution sale did you hear anything said or proclamation made about the "homestead exemption" of Sarah D. Partee; and, if so, what; and, if so, in which of said several plantations was a homestead exemption claimed? Was any of the land sold under said execution sold subject to the homestead exemption of M'r's Partee; and, if so, what tract, and what was said about it at said sale?

Int. 7. Have you been at any time the agent of James Stuart, plaintiff in said judgment against Sarah D. & William B. Partee;
394 and, if so, when, and in what capacity and for what purpose did you attend said execution sale on the 4th day of January, 1869?

Int. 8. What do you know about said execution sale? What steps were taken or acts done in reference to said sale to influence bidders thereat? Did Stuart desire to buy said lands, or any of them, at said sale? Was it his wish to buy the land or obtain the money on his judgment? What was your plan as his agent? What instructions had you, if any, in this respect?

Int. 9. Was the judgment spoken of in favor of said Stuart satisfied or unsatisfied before said execution sale? Had there been any settle-

ment or compromise or adjustment of it between Stuart and said Partee & wife, or either? What sum, if anything, was due Stuart on said judgment against Partee & wife, when said execution sale was made? Did said sale fully satisfy said execution? How much, if any? Was any part made to make said balance? Was any further process issued on said judgment; if so, what, when, and at whose instance?

395 Int. 10. How did said lands sell at said execution sale 4th January, 1869, as compared with their market value? How was the value of lands in Yazoo County rated in January, 1869? Was there much disposition to buy land there then? Was the demand active or dull? Were prices up or down? Had lands in that region advanced or declined, as compared with previous years? and if there had been any market change in value and prices, please state what it was.

Lastly. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination; if yea, set it forth fully and at large.

Interrogatories to be propounded to S. M. Dyer, viz:

Int. 1st. Were you sheriff of Yazoo County, Mississippi, in 1867, 1868, & 1869? When were you elected such sheriff, and when did you enter the office, and if you held more than one term? State the time of your election and qualifications and how long you held the office

396 as such sheriff. Did you have a deputy, and when, and who was your deputy? How did you make your appointment of deputy? Was John T. Heth your deputy, as sheriff; and, if so, when and how was he appointed such? Was his appointment in writing? if so, annex to your answer a copy of his appointment; if you cannot, state why you cannot. Have you made inquiry for it? What diligence have you used to find it? Where was it when you last knew of it? Did said Heath act as your deputy, and in what way and for how long, giving dates?

Int. 2. Do you know of any present property owned or held by Sarah D. Partee and William B. Partee, her husband, in Yazoo County, in the year 1868? Why did you not levy the execution in your hands against them in favor of James Stuart on personal property? Did you have any instruction not to levy on personal property in their possession; if so, from whom and what was it? Why did you levy said execution on lands? When did you first levy an execution from the circuit cou't of Yazoo County, Mississippi, in favor of James Stuart against

397 Sarah D. Partee and husband? And on what and why did you levy on lands instead of personality, if you did so levy on land?

Int. 3. Did you make sale of lands of Sarah D. Partee, or her husband, to satisfy said execution in favor of James Stuart them? Did you make more than one such sale? On what day of the week and month & year was said sale made? Where was it made? What notice of said sale was given, and how? Who and how many were present at said sale? How was said sale made? Was it at public outcry? Was it to the highest bidder? Were bids invited? Were any bids suppressed? Was the sale fairly made or not? Do you know of any arrangements, contrivances, or efforts competition in bidding at said sale? If so, state what they were. Do you know of any one who was desirous to buy said lands at said sale? State all about said sale and bidding & purchase of said lands.

Int. 4. Does the return of said sale on the venditioni exponas show the true date of said sale? How came said return to show the sale to

have been made on the 5th January, 1869? What was the true
398 date of the sale? and if an error was made in making return, and in the deed to the purchaser, state what the error was and how made.

Int. 5. If in answer to the enquiry in 2 interrogatory above you say that you levied an execution from said circuit court in favor of James Stuart against Sarah D. Partee and husband, on lands in 1867, why did you not then see said lands, and why did you not then levy on personality?

Int. 6. Do you know of any arrangement or contrivance to hinder said lands from bringing their full value when sold? If so, state between whom, and what it was? If you know of any unfairness, or combination to prevent bidding, or attempt of any kind on the part of any one, to circumvent or obtain improper advantage in connection with the sale of said lands state it fully, and if no such thing was done, so state.

Lastly. State any other knowledge you may have material to this controversy and of benefit to either party to it.

Interrogatories to John C. Prewetts, viz:

399 Int. 1. Were you in the years 1868 & 1869 the proprietor of a weekly newspaper published in Yazoo City, Yazoo County, Mississippi, and called the Yazoo Banner, and was there published in said paper an advertisement for the sale, by the sheriff of said county, of certain lands of Sarah D. Partee and William B. Partee, or either, under legal process from the circuit court of said county in favor of James Stuart? If so, please annex to your answer a copy of said advertisement, and state how often, and commencing and ending when, said advertisement was published and for what said sale was advertised, and by whom it was so advertised.

Int. 2. Were you present at a sale of lands in pursuance of said advertisement? If so, on what day of the week and month and year did such sale occur? Who was present besides yourself? Was the number small or great? Were any other sales made at the same place and on the same day, and by whom and how many, and did any of these sales attract the attention of persons?

Int. 3. At the time of said sale, how were lands valued in Ya-
400 zoo? Were they rated high or low as compared with previous or subsequent prices or valuation? If the price of lands generally, or of the Partee lands mentioned in particular, was affected by any cause at the time of said sale, please state the operating cause and the manner of its operation. Do you know of any lien or encumbrance of any sort on the Partee lands, having priority over the judgment in favor of Stuart? and if so, state its nature, amount, and all about it?

Int. 4. What is your estimate of the price for which said lands sold at said sale, under the circumstances of the sale, and what were those circumstances?

Int 5. Were you a practicing lawyer in Yazoo City in 1867 & 1868? Do you know of a writ of error from the high court of errors & appeals of the State of Mississippi to the circuit court of said Yazoo County to revise said judgment in said circuit court in favor of James Stuart against Sarah D. Partee and William B. Partee? Who prosecute' said writ of error? At whose instance was it obtained? Who was
401 counsel for plaintiff in error in said cause? For what purpose was said writ of error sued out? What object was to be gained by it? What purpose did it subserve? What became of said writ of error? Was there any understanding between the parties to said suit or

their respective attorneys as to the disposal of said cause? What was the state of feeling between the parties to said suit? How did Partee and wife feel toward Stuart in said case?

Int. 6. Who bought said lands at said sheriff's sale under process against Partee & wife? Please designate lands bought by each, if there were different purchasers?

Int. 7. Do you know of a suit in the circuit court of said county by James Stuart against William B. Partee for the recovery of any of the lands bought by said Stuart at said execution sale? If so, for what land was the suit brought, and who were attorneys, if any, for the respective parties, and was there any obligation in the case, and of what character?

Lastly. If you know anything further material to the subject of your examination, and of benefit to any of the parties to this issue, set
402 it forth fully and at large in your answers.

To W. R. Miles & W. S. Epperson, viz:

Int. 1. Were you practicing lawyers 1867 & 1868, and where? If yea, state if during that time you received for collection any claims on Sarah D. Partee and her husband William B. Partee, or either of them; if so, from whom & for what purposes and describe accurately such claims.

Int. 2. What did you do with said claims? and if you sued on them, state when and where and with what result, and if you recovered a judgment, did you have execution? Did you make the money? Why not? Could you not find property on which to levy? Did any of your clients, creditors of Sarah D. Partee or her husband, reside near Partee & wife; if so, which of them? Were you able to find personal property of said Partee & wife on which to levy executions? If so, what was it? If not, why not?

Int. 3. Were any of the claims against Sarah D. Partee and husband, or either, which you had for collection embraced in a deed of trust
403 executed by William B. Partee and Sarah D. Partee, on the 19th of November, 1866, to Robert Bowman as trustee? If yea, which of said claims were so included? Why was not said trust deed resorted to as a means of securing said claims? Were the claims disputed? Why was suits resorted to instead of the trust deed?

Did your clients aforesaid accept or reject the trust deed aforesaid? Did you ever communicate anything on this subject to said Robert Bowman? If so, what and at what time? At the time you brought said suits, did you know that said claims were included in said deed of trust of 19th November, 1866? Did you advise your clients of the facts of having obtained judgment on said claims, and when? Did you know of the other judgments against Sarah D. Partee & husband, and of one in favor of James Stuart? Did your clients have knowledge of said judgment? Did you know of the proposed sale of lands under Stuart's judgment before it occurred? Did your clients have information of it? Did you see the sheriff's advertisement of said sale? Where were you on the
404 day of said sale? Did you advise your clients of said sale and to which of them, did you propose to them or advise them to buy the lands of Sarah D. Partee; what was their answer; did they have free knowledge of said sale? Annex hereto as your answer their reply, or that of Hyams & Jones.

Lastly. State anything further you know of benefit to either party to this controversy fully and at large.

To N. G. Nye and R. S. Hudson, viz:

Int. 1. Were you a lawyer in practice in the years 1867, 1868 & 1869,

and where? During that time did you receive for collection any claims against Sarah D. Partee and her husband, William B. Partee, or either of them? If yea, describe them. Were said claims or any of them included in a certain deed of trust executed by said Partee & wife to Robert Bowman, trustee for creditors on the 19th November, 1866? If yea, which of them? What course did you pursue with said claims? Did you obtain judgment? Why did you not resort to the said deed of trust?

405 How was said deed of trust regarded by your clients? Was any communication on this subject made to said Robert Bowman and what, and by whom, and when? How was said deed of trust viewed and regarded, and what was spoken of it by members of the bar at Yazoo City?

Int. 2. Were you present at a sheriff's sale of lands of Sarah D. Partee in January, 1869, under execution from circuit court of said Yazoo County, favor of James Stuart? On what day of the week and month and year was said sale made? Were there many or few persons present at sale? Were any judgment creditors of Sarah D. Partee and husband, or either, there? Who? If you name any, state his position as a judgment creditor, the amount due, and why he was present? Have you any interest in or duty in reference to said sale; what? Did you observe the course of said sale? How was it conducted? Do you know of any one having contemplated buying said lands or any of them at said sale; who? Did he buy; why not? If there was anything unfair or improper about said sale, please state it fully.

406 Int. 3. What acquaintance had you at the time with the value and price of land in Yazoo County and with the lands sold at said execution sale? How did the price for which said lands were sold at said execution sheriff's sale compare with a fair and proper valuation, considering all the circumstances, and state any circumstances exercising an influence on the value of lands generally, and those particularly, if you have knowledge of any?

Int. 4. If you have answered that as attorney you had obtained any judgment against Sarah D. Partee and husband, or either, state if you made the money. Why not, if not? Did you have execution issued? Did you have property levied on? Why not? What personal property had said defendants or either? Did you make any effort to find property? What effort, and with what success?

Int. 5. Who worked, managed, and controlled the lands of Sarah D. Partee, sold at said execution sale in the years 1867 & 1868 & 1869? Who owned the mules, farming implements, & other personal property, if any, on said lands during said years? Were there any encum-

407 brances on said personal property, and by whom made, and in whose favor?

Int. 6. Did you have notice of said execution sale before it occurred? Did your clients, or any of them, having claims against Partee & wife know of said sale before it occurred? Which of them, and how did they have notice? Did you observe the advertisement of said sale before the said sale-day?

Lastly. Do you know, or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause or either of them, or that may be material to the subject of this, your examination, or the matters in question? If yea, set the same forth fully now.

ROBERT BOWMAN,
J. A. R. CAMPBELL,
Sol's for Defendant.

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Cross-interrogatories to be propounded to John T. Heth:

1st cross-interrogatory. If in answer to the second direct interrogatory you say that you did levy an execution from the circuit court of Yazoo County, on a judgment in favor of James Stuart against Sarah D. Partee and William B. Partee, on certain lands as the property of Sarah D. Partee, please state whether or not before you made said levy you went upon the lands then occupied by the defendant, and did you endeavor to find, or did you make any effort to find personal property on which to make a levy?

2. Cross-interrogatory. State fully what efforts were made by you to find personal property on which to make a levy.

3. Cross-interrogatory. Do you know at whose instance the execution was issued? If yea, who caused it to be issued? And what at-
409 torney controlled said execution, and directed a levy to be made?

4. Cross interrogatory. How many mules were there on "Lake Dick," "Tyrone," "No Mistake," and "Seven Gums," at the time when said levy was made? What was the aggregate value of said mules? How many cattle at that time on the four places, and what was their aggregate value? How many bales of cotton at that time on said four places, and what was the value thereof? What was the value of the farming implements on said places at that time?

5. Cross-interrogatories. Do you consider the sum of $550.00 the fair va?ue of the lands bought by James D. Partee, and described as the S. ½ of sec. 9, N. E. ¼ & S. ½ of N. W. ¼ & S. ½ sec. 10, W. ½ of N. E. ¼ & N. W. ¼ & S. ½ sec. 11, all sec. 14, the N. ½ sec. 15, E. ½ of N. E. ¼ of sec. 15, the N. ½ & S. E. ¼ sec. 23, the W. ½ sec. 24, all of T. 9, R. 4 W.?

6. Cross-interrogatory. If the sum paid by James D. Partee for the large quantity of lands bought by him was the fair value, why is
410 it that one plantation bought by James Stuart sold for $5,200.00? Are not the three plantations bought by James D. Partee worth fully three times as much as the single plantation bought by James Stuart?

7. Cross-interrogatory. After the lapse of five years since said sale, are you able to state on what day the sale took place, independently of the information which you receive from the return made on the venditioni exponas? If there is any other means of fixing the day more to be relied on than the return made by the officer?

8th cross interrogatory. What attorney represented the plaintiff when the sale took place under the vendi., and who bid for the plaintiff when "Lake Dick" was bought by James Stuart?

9. Cross-interrogatory. Was James D. Partee present on the day of the sale? Did he bid for himself or did some one bid for him? If some one bid for him, who was the bidder?

10. Cross-interrogatory. The deed from the sheriff to James D.
411 Partee shows that said James D. Partee bought the lands described in 5th cross-interrogatory, which included "No Mistake" and one or two other plantations. Now I ask, were all the lands described in the 5th cross-interrogatory, put, offered, and sold by the sheriff in one body; or was "No Mistake" put and sold separately? In what quantities were the lands bought by James D. Partee, put up and sold; and in how many different lots were they sold?

CANAL BANK ET AL.
vs.
WILLIAM B. PARTEE ET AL.

Cross-interrogatories to be propounded to Edward Drenning:

1st cross interrogatory. After four or five years have elapsed since said sale, are you able to state the day of the week and month on
412 which said sale took place, without reference to the return made by the sheriff on the deed made by him to the purchasers? If yea, how or by what means you are able to fix the day? If, in fixing the day of the week and month, you are guided by any written entries or memoranda in your possession, is it not possible that the person who wrote such entries or memoranda may himself have made a mistake? Is it more probable that the official return made by the officer is incorrect, than that the entry or memoranda of some one else is erroneous?

2ond cross-interrogatory. How many persons bid on said lands, if any, besides the persons representing Stuart, and the persons representing James D. Partee?

3d cross-interrogatory. At whose instance or request did you become the administrator of Christopher Todd, deceased?

4th cross-interrogatory. When was the decree rendered, and for what sum in a certain chancery court, in which Edward Drenning was complainant, and the administrator of Christopher Todd, deceased,
413 and W'm B. Partee and Sarah D. Partee were defendants? State how much has been paid on said decree, and what amount is still due, if any.

5th cross-interrogatory. If in answer to the 6th direct interrogatory, you say that at said sale W. B. or Sarah D. Partee claimed a homestead in one of the plantations bought by James D. Partee, you will please state whether it is or is not the fact that subsequently to said sale the said W'm B. & Sarah D. Partee have been insisting, and are now insisting, that at said sale the homestead exemption was claimed on the place known as Lake Dick.

6th cross-interrogatory. Is it or is it not the fact that at the present time there is a suit in ejectment now pending in the circuit court of Yazoo County, Mississippi, wherein James Stuart is plaintiff and Sarah D. & William B. Partee are defendants?

7. Cross-interrogatory. Is it, or is it not the fact that James Stuart, after the institution of the suit in ejectment, filed a bill in chancery to enjoin said William B. & Sarah D. Partee from settling up a
414 claim to a homestead exemption in the "Lake Dick plantation"? Has not the injunction in said case been dissolved?

8th cross-interrogatory. Where, or at what time, did you first become the agent of James Stuart; if you were such, how long were you such agent? In what way was your appointment as agent first made known to you? Was James Stuart in Yazoo City at the time?

8th cr.-interrogatory. As the bid made by Stuart did not exhaust his judgment, why did you not buy "Tyrone" & "Seven Gums" for your principal? Why did you permit the plantations to sell for $550, when Stuart had a judgment against Sarah D. Partee and William B. Partee which had not been exhausted by the purchase of "Lake Dick"?

415 CANAL BANK ET ALS.
vs.
WILLIAM B. PARTEE ET AL.

Cross-interrogatories to be propounded to S. M. Dyer:

1st cross-interrogatory. If in answer to the 2nd direct interrogatory you say that you did not know, or you do not know of any personal property owned or held by Sarah D. Partee and William B. Partee, her husband, in Yazoo County in the year 1868, please state whether or not you went to the plantations which were in their possession, and did you endeavor to find personal property on which to make a levy?

2nd cross interrogatory. To which of said plantations did you go for said purpose; did you send any of your deputies for that purpose? If yea, which deputy?

3d cross-interrogatory. If in answer to the 2nd direct interrogatory you say that you did have instructions not to levy on person'l
416 property in the possession of Sarah D. and William B. Partee, please state from whom you received such instructions, and when were the instructions given.

4. Cross-interrogatory. You will please file with your deposition a copy of the notice of sale. In stating the day of the week and of the month and year on which said sale was made, are you not necessarily governed by your official return made as sheriff on the vendi under which said lands were sold?

5th cross-interrogatory. How many persons were bidders at the sale? If in answer to the fourth direct interrogatory you say that the return of said sale on the venditioni exponas does not show the true date of said sale, you will please state whether the official return made by a sheriff or a writ directed to him is not the very highest authority by which to determine what was done under such writ and when it was done?

6. Cross-interrogatory. If in answer to the 3d direct interrogatory you state what notice of said sale was given, you are requested to file
417 with your deposition, as an exhibit thereto, a copy of said notice, and you will please state in which newspaper said notice was published; give the date of the first insertion and the last insertion.

7. Cross-interrogatory. Who receipted to you for the amount of James D. Partee's bid, and for the amount of James Stuart's bid? File with your answer a copy of the receipt taken by you as sheriff.

8th cross-interrogatory. Who instructed or directed you to make the levy which was made by virtue of the execution issued on the judgment in favor of James Stuart against Sarah D. Partee and William B. Partee? Who requested, directed, or instructed you to sell under the vendi?

9. Cross interrogatory. The deed made by you to James D. Partee shows that he bought at said sale the S. ½ of sec. 9, the NE. ¼ & S. ½ of NW. ¼ & S. ½, sec. 10; the W. ½ of NE. ¼ & NW. ¼ & S. ½, sec. 11; all sec. 14; N. ½ sec. 15; E. ½ SE. ¼ sec. 15; N. ½ & SE. ¼ sec. 23; the W. ½
418 24, all of S. 9, R. 4 W. Now, I ask, were the whole of the lands here described offered at once and cried of' together, or were they offered in dif'erent lots? If offered in different lots, was No Mistake offered and sold separately, or was it sold with other lands? If said lands bought by James D. Partee were offered & sold in dif'erent lots, in how many lots were said lands offered? Did bidders have an opportunity of bidding on the lands embraced in the deed to James D. Partee without being compelled to buy the "No Mistake" plantation?

Cross-interrogatories to be propounded to John C. Prewett:

1st cross-interrogatory. In answer to the first direct interrogatory, give the date of the first insertion, and of each subsequent insertion.

2. Cross-interrogatory. In the second direct interrogatory you
419 hvae been asked on what day of the week and month and year the sale occurred. Are you able to state, after the lapse of five years, what day of the week and month said sale took place, without refer'ing to the advertisement itself? Is it or is it not the reference made by you to said advertisement which leads you to conclude that the sale did take place on the day named by you? Is or is it not the conclusion to which you arrive relative to the day an inference drawn by you from the information furnished by said advertisement?

3d cross-interrogatory. Would you be able to state the day of the week, month, and year on which said sale was made without referring to said advertisement?

420 Cross-interrogatories to be propounded to W. R. Miles and W. S. Epperson:

1st cross-interrogatory. If in answer to the 2nd direct interrogatory you say that you sued on said claims, you will please file with your answer as an exhibit thereto a copy of each claim sued on, showing the date and amount of each claim, when due in whose favor, and where payable. State the date when each suit was instituted, the date when each judgment was obtained, and the amount of each judgment.

2. Cross-interrogatory. When Hyams & Jones learned that a sale had taken place under a judgment in favor of James Stuart, did they or did they not express surprise and disappointment, not only because said sale had taken place but because the trustees in a deed of trust made by Sarah D. Partee and William B. Partee in 1866 to secure said notes with others had not notified them previous to said sale that it was about to take place?

421 3d. Cross-interrogatory. If you have in your possession letters written by Hyams & Jones, esq'r's, after the date of said sale, after they had learned that said sale had taken place, you will please file copies of each letters as exhibits to your deposition with your answer to the second cross-interrogatory.

4th cross-interrogatory. If in answer to the 3d direct interrogatory you say that your clients rejected the trust-deed aforesaid, give the date of the letters containing such rejection and file a copy of it as an exhibit to your answer.

5. Cross-interrogatory. If in answer to the fourth direct interrogatory you say that your clients had information as to said sale before it took place, you will please state how they had such information, and when they received it. If by letter from you, file a copy of said letter as an exhibit to your deposition. If in answer to the third direct in-
422 terrogatory you say that you proposed to, or advised your clients to buy the Partee lands, you will file with your answer a copy of your letter containing that advice, and a copy of such letter as you received in reply to that subject.

Cross-interrogatories to N. G. Nye and R. S. Hudson:

1st cross-interrogatory. Do you know the number of acres of cleared land in the "Lake Dick plantation"? How far do you live and reside from the lands sold under the execution or writ of venditioni exponas?

2. Cross-interrogatory. Do you know the number of acres of cleared land in the plantations bought by James D. Partee at the sheriff's sale spoken of in your direct examination?

423 3d cross-interrogatory. Do you consider the sum of $550.00 a fair price for the plantations bought by James D. Partee and described as the S. ½, sec. 9; N. E. ¼ & S. ½ of N. W. ¼ & S. ½ sec. 10; W. ½ of N. E. ¼ & N. W. ¼ & S. ½ sec. 11; all of sec. 14; the N. ½ of sec. 15; the E. ½ of S. E. ¼ of sec. 15; the N. ½ of S. E. ¼ sec. 23; the W. ½ sec. 24, all of T. 9, R. 4 W.

4. Cross-interrogatory. Were the whole of the lands described in the 3d cross-interrogatory put up by the sheriff and sold together in one body, or were said lands sold in separate and distinct parcels? If put up in defferent parcels, what quantity of lands were sold together & at the same time?

5th cross-interrogatory. If parties desiring to buy land at that time had been fully satisfied that a clear title would be obtained at a sale at that time, would said lands have sold for more than was obtained for them at said sale?

6. Cross-interrogatory. Were said lands put up and offered in
424 such manner and in such quantities as to cause them to sell for their full and fair value?

7. Cross-interrogatory. Did or did not the existance of the deed of trust dated November 19th, 1866, although subsequent to the judgment in favor of Stewart, and what was said about incumberances, leave an influence on bidders? Was or was not the existance of said deed of trust and what was said about incumberences calculated to raise some doubt as to the title, and thus to leave some influence on the sale, causing said lands to sell for much less than they would have sold for if the nature and extent of incumberences had been fully and definately understood?

8. Cross-interrogatory. Was it strictly understood at said sale that a decree rendered by the chancery court of Yazoo County, Mississippi, in a cause wherein Edward Drenning was complainant, as administrator of Christopher Todd, deceased, and William B. Partee and Sarah D. Partee, his wife, were defendants, was a lien on "No Mistake" only, and
425 not upon the other lands bought by him, or was it supposed from what was said at said sale that said decree was a lein or incumberance on all of the lands bought by said James D. Partee?

9. Cross-interrogatory. If it had been understood that said decree was a lein on "No Mistake" only, and if said other lands bought by said James D. Partee had been put up for sale separately, and not offered with the No Mistake plantation, what would have been the effect of said sale?

W. L. NUGENT,
A. M. HARLOW,
For Complainants.

Agreed that depositions of witnesses named in caption, including W. S. Epperson, whose name is omitted in caption, be taken on interrogatories and cross-interrogatories without notice. All matters of form & time waived.

Notice and commission are wa'ved, and it is agreed that the
426 deposition of the foregoing witnesses, including W. S. Epperson, may be taken without delay on the direct and cross-interrogatories, subject to exception for competency and relevernce.

A. M. HARLOW,
For Complainants.

STATE OF MISSISSIPPI,
Yazoo County:

I, W. H. Mangum, commissioner in the United States court for the southern district of Miss., in and for Yazoo County, do certify that the above waive' of notice & commission was agreed to, written & signed by A. M. Harlow on Monday, 10th day of August, 1874. M'r Harlow refusing to date the same, I hereby certify to the signing & date of the same.

Given under my hand & seal the 13th of Aug'st, 1874.

W. A. MANGUM,
U. S. Commissioner.

427 Answers of John T. Heth to interrogatories and cross-interrogatories in a certain cause now pending and undetermined in the circuit court of the United States for the southern district of Miss., wherein Canal Bank et als. are plaintiffs and William B. Partee et al. are defendants, on the part of defendant, who, after being duly sworn, deposes and proceeds as follows:

Nugent & Harlow for plaintiff.
Campbell & Bowman for defendants.

Ans. to 1st direct interrogatory. Samuel M. Dyer was sheriff of Yazoo County during those years, 1866, 1867, 1868, and up to March,
428 1869. I was one of his deputies during that time. I was appointed by S. M. Dyer. My appointment was made in writing. I was duly sworn in by the clerk of the probate court of Yazoo County or the judge of the probate court of Yazoo County, I don't recollect which. My commission was filed in the probate clerk's of'ice of said county. Dyer was elected sheriff in November, 1865. I was appointed deputy soon after he qualified and took charge of the office. I did take the usual oaths prescribed on such occasions, which oath was filed with my appointment in the probate clerk's office. I cannot annex the required copy, as the original was filed in the clerk's office at the time of my appointment. I have not seen it since. I applied to the clerk of the chancery court for my appointment that was filed, but the clerk could not find it. I have stated all the facts in the case as far as I can remember them.

429 Ans. to 2 direct int. I don't remember whether they had any personal property in their possession or not in those two years. I did not levy an execution in favor of James Stuart against William B. Partee and Sarah D. Partee on certain lands as the property of said defendants. Said levy was made on the 9th day of April, 1867. The levy was made on the land because there was no personal property of defendants to be f'und that was subject to execution; the mules, cattle, farming implements, & other personal property on the place was claimed by James D. Partee and W. B. Partee, sons of W. B. & Sarah D. Partee. The two sons had possession. James D. Partee purchased a portion of said land. They had no connection with said land before the sale that I know of. I have answered as to the personality.

Ans. to 3 direct int. The land levied on was sold on the 5th day of January, 1869. There was no further proceedings that I know of.
430 The land was sold by the sheriff to satisfy said judgment on the 5th day of January, 1869. The land was sold under a vendi. returnable to the May term, 1869, of the Yazoo circuit court, as well as I now recollect; the lands was sold by S. M. Dyer, sheriff, before the court-house door of Yazoo County on Monday the 5th day of January,

1869, after having been legally advertised. I am not certain, but I think there were other sales made on the same day. There wase a good many persons present at said sale. I don't know how many; I did not count them.

Ans. to 4th direct int. The land sold in the aggregate for four thousand seven hundred & fifty dollars. I do not recollect anything about the market-value of lands at that time. The sale was a public one. I do not recollect how many bidders there were or how many bids were made; every one present had an opportunity to bid who wished to do so; there was no hinderence or interfearance offered of any kind; it was a free thing; a public sale legally made.

431 Ans. to 5th direct int. The return of said sale of said lands made on said vendi. does show the true date of said sale. The sale was made on the 5th day of January, 1869, which was the true date of the sale. The 5th day of January, 1869, was fixed on as the day of sale by the sheriff in his advertisement of the land. I have explained everything in ref'rence to this sale as fully as I can.

Examination-in-chief here crossed.

Cross-examination by Nugent & Harlow:

Ans. to 1st cross-int. I did not go on the lands to make the levy. I did not made any effort myself to find any personal property, for the reason that the personal property on the place was claimed by the two sons of W. B. & S. D. Partee.

Ans. to 2nd cross-int. I have just answered that in the above answer.

Ans. to 3d cross-int. I don't recollect at whose instance the levy

432 was made, nor do I know what attorneys controlled the case.

Ans. to 4 cross-int. I don't know how many. I don't know anything about the mules or cattle; their value or ownership. I know nothing about the number of bales of cotton or the value thereof. Neither do I know anything about the value of the farming implements.

Ans. to 5th cross-int. I did, & do consider the sum of $550.00 a fair price for said lands, with the incumberances said to be on said lands at the time of the sale.

Ans. 6 cross-int. I cannot answer that question fully, as I do not know what the market value of lands was at that time, nor do I know the relative value of those lands.

Ans. to 7 cross-int. I knew of no other means of fixing the date of sale only from the written returns made on the vendi. at the time.

433 Ans. to 8th cross-int. I don't know who represented the plaintiff at the sale. I Edward Drenning represented the plaintiff; I am not certain.

Ans. to 9 cross int. I think he was present and bid for himself; that is my recollection.

Ans. to 10 cross-int. I don't know now, nor do I recollect how the lands were sold, whether in bodies or subdivisions. I did not know one place from another; the deed was made to James D. Partee for the lands bid off by him. I am satisfied that the sale was made strictly according to the then existing laws governing sheriff's sales at that time.

JNO. T. HETH.

Sworn to and subscribed before me this 20th day of July, 1874.

W. H. MANGUM,
U. S. Commissioner.

I, W. H. Mangum, a commissioner in the United States court for

Yazoo County, in the southern district of Mississippi, do hereby
434 certify that John T. Heth, a witness summoned to testify in behalf of the defendant in a certain cause now pending in the United States court for the southern district of Mississippi, wherein Canal Bank et als. are plaintiffs and W. B. Partee and Sarah D. Partee are defendants, appear & testifies as before stated, which deposition was taken down by me in my own handwriting, and the same being read over to the witness was by him approved, sworn to, and subscribed before me this 20th day of July, 1874.

W. H. MANGUM,
U. S. Commissioner.

Answers of R. S. Hudson to interrogatories and cross-interrogatories in a certain cause now pending and undetermined in the circuit court of the United States for the southern district of Mississippi, wherein
435 the Canal Bank et als. are plaintiffs and W. B. Partee and Sarah D. Partee are defendants, on the part of the defendants, who, after being duly sworn, deposes as follows:

Nugent & Harlow for plaintiffs.
Campbell & Bowman for defendants.

Ans. to 1st direct int. I was a lawyer in practice in 1867, 1868, & 1869 in partnership with N. G. Nye under the firm name of Hudson & Nye, at Yazoo City, Miss., and during that time Hudson & Nye did recieve for collection one or more claims against Sarah D. Partee, wife of W. B. Partee. I cannot now describe them fully not having them before me, but one is in in the case of W. B. Partee & wife against William Silliman, reported in 44th Miss. Reports, page 272. My recollection is that said claim and said suit and perhaps others were included in a certain deed in trust executed by said Partee & wife to Robert Bowman, trustee for creditors, on or about the 19th of November, 1866, & particularly one in the case above
436 refer'ed to. We sued upon said claim or claims and obtained judgment. We did not resort to said deed of trust because were of the opinion that it was upon its faice unfair, unjust, fraudulent, & void, and the same was so regarded by our cleints to whom we gave that opinion. I don't recollect of any communication made by us to said Robert Bowman on the subject, except that we would not accept the provisions of the deed of trust, and that we deemed it invalid. This was shortly before or about the time of instituting suit in the above-stated case; said deed of trust was regarded by Hudson & Nye, & Miles & Epperson, members of the bar at Yazoo City, as I have stated above. I do not recollect to have heard others speak on the subject.

Ans. to 2ond direct int. I have no recollection of attending the sheriff's sale mentioned; cannot give the day of the week, month, or year of such sale, nor tell whether there were many or few persons at said
437 sale, nor whether any of the creditors of Sarah D. Partee or husband were there; that N. G. Nye, my then partner, supervised and tended to all such matters in which we or our clients were concerned; my recollection is that he was present at such a sale; as to balance of this interrogatory I cannot give any further information.

Ans. to 3d direct int. I can't say that I was well acquainted with the value & price of lands in Yazoo County at that time, nor either the land sold at said execution sale. As to the balance of this interrogatory I can state nothing definately.

Ans. to 4 direct int. We never made any money on any claim or judgment in our hands against Sarah D. Partee; executions were issued;

whether ever levied or not I do not recollect. As to the balance of this interrogatory I cannot speak with any cirtainty, as M'r Nye took charge of and attended to such things after judgment, but I am sure we got no money, and that it was not our fault.

438 Ans. to 5th direct interrogatory. I am not positive who worked, managed, and controlled the lands of Sarah D. Partee sold at execution sale in the years 1866, 1867, & 1869; nor who owned the mules, farming implements, & other personal property, if any, on said lands during said years; nor what incumberence, if any, there was on such personal property. But to the best of my recollection Sarah D. Partee, or her husband, or her sons, or all of them, managed and controlled said lands refer'ed to during the year stated.

Ans. to 6th direct int. I recollect of no notice of said execution sale before it occur'ed; nor of my clients having such notice. Nor do I recollect of observing the advertisement of said sale before the sale day. I was professionally absent a very large portion of my time, and matter of the kind enquired of or about were generally left to the care

439 & attention of N. G. Nye. I knew but little about them, except when he made a report to me. I know nothing of either that will benefit the *the* defendant, or that will be of mat*t*erial.

Cross-interrogatories by Nugent & Harlow:

Ans. to 1st cross-int. I do not know the number of acres of cleared land in the "Lake Dick" plantation. I reside about 25 miles from all the lands sold under the execution.

Ans to 2ond cross-int. I do not.

Ans. to 3d cross-int. I do not; but must say that my knowledge of the lands and their value is rather imperfect.

Ans. to 4th cross-int. I am not able to answer this question.

Ans. to 5th cross-int. I cannot answer this question.

Ans. to 6th cross-int. I cannot answer this question.

Ans. to 7th cross-int. I cannot answer this question further

440 than I have already stated in my answers to the direct interrogatories in chief, except as a matter of opinion, that the circumstances mentioned in this interrogatory were & well calculated to embarrass and impair the sale of such property and its fair market value.

Ans. to 8th cross-int. I cannot answer this question, as I was not present at the sale.

Ans. to the 9th cross-int. I cannot answer this question. I was not there; I know nothing about it.

ROBERT J. HUDSON.

Sworn to and subscribed before me this 24th day of July, 1874.

W. H. MANGUM,
U. S. Commissioner.

I, W. H. Mangum, a commissioner *in* the United States in Yazoo County, for the southern district of Mississippi, do hereby certify that R. S. Hudson, a witness summon'd to testify in a certain cause now pending and undetermined in the circuit court of the United States for the southern district of Mississippi, wherein the Canal Bank et als. are plaintiffs and William B. Partee and Sarah D. Partee are defend-

441 ants, on the part of the defendant appeared and testified as before stated. Which deposition being taken down by me in my own handwriting, and the same being read over to the said witness, was by

him approved. Sworn to and subscribed before me this 24th day of July, 1874.

W. H. MANGUM,
U. S. Commissioner.

Answers of Edward Drenning to interrogatories & cross-interrogatories in a certain cause now pending and undetermined in the circuit court of the United States for the southern district of Mississippi, wherein Canal Bank et als. are plaintiffs and William B. Partee & Sarah D. Partee are defendants, on the part of the defendant, who, being duly sworn, deposes as follows:

Ans. to 1st interrogatory. I reside in Yazoo City; have been a practicing attorney since 1869.

Ans. to 2 inter't. I was present at said sale; do not recollect
442 the day & date; some of the circumstances I remember. William B. Partee & James D. Partee were present; "No Mistake plantation" was sold subject to a prior lien under a decree in favor of E. Drenning, administrator of Christopher Todd, amounting to seven or eight thousand dollars. No Mistake was purchased by James D. Partee for five hundred dollars; the "Lake Dick plantation" was bought in by Judge Bowman for James Stuart. Partee's lands were sold in two parcels, upon a memmorandum furnished by him. The sale took place in front of the court-house door of Yazoo County, in Yazoo City, Mississippi.

Ans. to 3d direct int. I do not remember whether any other sales were made on that day by the sheriff or not. Many persons besides myself were in attendance at said sale, of whom I recollect the following: N. G. Nye, R. A. Barkley, Judge Bowman.

Ans. to 4th direct int. Not less than twenty persons were present; probably more. The sale took place on Main street, in Yazoo
443 City, at a prominant place, and occupied some time. I do not recollect any other names than those I have stated. Barkley was a judgment creditor of Partee at the time of said sale; was one of the principal bidders on the Lake Dick plantation. I recollect some conversation as to him at the sale. I think the firm of Hudson & Nye, of which N. G. Nye was a member, had previously obtained judgment against W. B. & S. D. Partee, which were then and are still unsatisfied.

Ans. to 5th direct int. I am the party in whose favor said decree was rendered. No part of said sum had been paid before said execution sale; the amount was about seven or eight thousand dollars.

Ans. to 6th direct int. Not one word was said about the homestead exemption on either of said plantations.

Ans. to 7 direct int. I have always been the agent of James Stuart in respect to said judgment. I directed James Stuart to entrust Wilkinson
& Bowman with the collection of the note on which said judgment
444 was founded. I attended said sale as a matter of business, as the agent of James Stuart and the admin. of Christopher Todd.

Ans. to 8th direct int. As far as I know said was regular, legal, upon due notice, and was attended by parties chiefly interested in it. I do not know of any step being taken to influence bidders in one way or another. James Stuart and I as his agent, were exceedingly anxious to realise the money on said judgment and did not want any lands at all. They were reluctantly purchased as disagreeable alternative. Most decidedly it was not his wish to buy the lands. Before said sale took place I endeavored to sell said judgment to James D. Partee. First, last, and always James Stuart has only desired to realise the amount of

money due him. I had no special plans & no special intentions as Stuart's agent, except to realise the amount of said judgment.

Ans. to 9th direct int. It was whol'y unsatisfied and amounted
445 to about seven thousand dollars. No settlement, compromise, or adjestment had taken place. I had proposed to sell said judgment to James D. Partee, but nothing was expected on this proposition. Said sale did not satisfy said execution by about two thousand dollars. No opportunity has occur'ed & no effort has been made to collect said balance, except as follows: Partee & wife had an imperfect title to a small tract of land between "Lake Dick" and the Yazoo River, which had not been levied upon nor included in said execution sale. Some time subsequent to said sale I purchased a tax title to said land for said Stewart, and to extinguish what title Partee had caused an execution to be issued & levied thereon, with a view of having a sale of said lands; but as Stuart came into possession of it no sale has ever been made. This is the only further process ever issued on said judgment, except as follows: M'r's Partee, as one of the heirs of Christopher Todd, had an in
446 terest in the Todd decree, and to reach this interest I have been garnisheed in said judgment. This suit is still pending in the Yazoo circuit court. M'r's Partee claims to have transfer'ed said interest previous to said garnishment, and as the litigation in this case appears to be expensive, protracted, and doubtful, it has accordingly not been brought to trial. I do not recollect the time of the institution of the garnishment, but it was some time after said execution sale. All the proceedings subsequent to said sale have been at my instance & suggestion, and I now hold the power of attorney of James Stuart investing me with full authority.

Ans. to 10th direct int. Lands did not sell well at any kind of sale in 1868, more especially swamp lands, such as the "Lake Dick plantation," as the county at that had not recovered from the overwhelming disasters of 1867. Every kind & quality of land was much depreciated. The "No Mistake" place did not bring one-fifth of its value. There was scarcely any disposition to buy land. The overflow of 1867 exercised such a depressing effect on lands that it effected prices
447 for many years and unsettled labor.

Lastly. At the time of said execution sale there was and continues to be much bitterness of feeling between James Stuart and the Partees; James Stuart has always considered the acts of the Partees at the sale, with ref'rence to the homestead, to be an imposition and a fraud.

Examination-in-chief here closed.

Cross-interrogatories Harlow:

Ans. to 1 cross-int. I am unable to state the day & date of said sale, as I have not refer'ed to any memorandum. It is unnecessary for me to consider the question of possibilities & probabilities.

Ans. to 2 cross-int. I do not recollect, except R. A. Barkly, or R. A. Barkly by N. G. Nye.

Ans. to 3d cross-int. At the instance of Judge Robert Bowman the decree was rendered previous to said execution sale for about six or seven thousand dollars; two thousand dollars was paid on it about two years ago; the balance, with interest, is still due.

448 Ans. to 5th cross-int. Subsequent to said execution sale the homestead exemption on "Lake Dick" had been claimed by the Partees.

Ans. to 6th cross-int. A suit is pending, as stated, but only the homestead is considered to be involved.

Ans. to 7 cross-int. Said bill in chancery was filed as stated. Said injunction has been dissolved.

Ans. to 8th cross-int. I became the agent of James Stuart from the beginning of legal proceedings against the Partees. My appointment was made known by a letter. James Stuart was not in Yazoo City at the time.

Ans. to 9th cross int. "Tyrone" & "Seven Gums" are a part of the No Mistake plantation. The "No Mistake" plantation, as refer'ed to by me, included all of Partee's land in that vicinity, except "Lake Dick." James Stuart did not buy or bid on Tyrone or Seven Gums.

449 Nor were they seperately offered for sale, being included, as before stated, in the original "No Mistake" plantation. I had advised James Stuart to buy No Mistake, but he did not wish to lay out the amount of money necessary to raise the incumberances on decree, in the then depressed condition of affairs. Tyrone and Seven Gums are later improvements on portions of the original No Mistake plantation. Lake Dick was the only plantation unincumbered by a lein prior to Stuart's judgment, and the only one which he could buy without the investment of an additional sum of money outside of & beyond his judgment.

Cross-interrogatories here closed.

E. DRENNING.

Sworn to & subscribed before me this the 29th day of July, 1874.

W. H. MANGUM,
U. S. Commissioner.

I, W. H. Mangum, commissioner in the United States court for the southern district of Mississippi in and for Yazoo County, in said district, do hereby certify that Edward Drenning, a witness summoned

450 to testify in behalf of the defendants, in a certain cause now pending & undetermined in the circuit court of the United States for the southern district of Mississippi, wherein the Canal Bank et als. are plaintiffs and W. B. & S. D. Partee are defendants, appeared and testified as before stated, which deposition was by me taken down in my own handwriting, and being read over to said witness was by him sworn to and subscribed before me on the 29th day of July, 1874.

W. H. MANGUM,
U. S. Commissioner.

Answers of J. C. Prewitt to interrogatories and cross-interrogatories in a certain cause now pending and undetermined in the circuit court of the United States for the southern district of Mississippi, wherein the Canal Bank et al. are plaintiffs and W. B. & S. D. Partee are defendants, on the part of the defendant, who, after being duly sworn, deposes as follows:

NUGENT & HARLOW, *for Pl'ffs.*
CAMPBELL & BOWMAN, *for Def't.*

451 Ans. to 1st direct interrogatory. Yes; I was the proprietor of said newspaper during said years. Such advertisement as that mentioned appeared in said paper, a copy of which is hereto annexed as Exhibit A.

Ans. to 2ond direct int. I was not exactly present at the time of the

sale of said lands. I was standing about, in and out of the crowd. I cannot state positively who were present, but there was a considerable crowd present to the best of my knowledge & belief. The sale took place on Monday, the 4th day of January, 1869. There were several other sales on said day that attracted the attention of the crowd; at the time I had no interest in the sale, but was interested in another sale.

Ans. to 3d direct int. Lands were low at that time as compared with other times. I know nothing that would depreciate the value of the Partee lands, unless it was the fact that all the Partee lands were advertised to be sold subject to a claim of defendants to a homestead, and also that M'r E. Drenning, as administrator of Christopher Todd, deceased,
452 held a decree on those lands bought at the sale by James D. Partee, which decree was for some eight thousand dollars, and was a paramount and prior claim on those lands. I think at the time of the sheriff's sale M'r Drenning had advertised the land subject to the Todd decree for sale, but said sale never took place.

Ans. to 4th direct int., he says: Lands were not selling for a great deal of money at that time, and I do not remember any of the sales during that period, and there were a number of them at which lands brought their value according to my judgment. I would not say that the lands bought by James D. Partee sold high; however, was considering the prices prevailing as fair. I would say even with the Todd decree on those lands, James D. Partee bought them cheap. If it was understood at the sale that the homestead was to be carved out of these lands, & I do not say that was the understanding, for I knew nothing personally as what the understanding in this respect by parties
453 interested was, I think the lands bought by James D. Partee sold very well indeed, considering prices then given for land. As to the lands purchased the same day by James Stuart, I think he gave a fair price for them, even if the homestead was not located on them, as they are not as good lands as those purchased by James D. Partee, and if the homestead was understood to have been carved out of them (and I do not say that was the understanding), he gave too much for the land according to prices then rating.

In answer to 5th direct interrogatory, he answers: I was a practicing lawyer in Yazoo City in 1867 & 1868. I prosecuted a writ of error from the high court of errors & appeals in the case described. The writ of error was obtained at the instance of W. B. Partee, who employed me for the purpose. The writ of error was sued out in order to give the defendants (the Partees) in the judgment all the time possible in which to pay Stuart's debts; there was no error in the judgment as I concieved, and I only expected delay. I did all I legitimately could
454 to stave off the execution of Stuart's judgment, all at the instance of Partee, who I suppose thought if he could get time he could arrange his pecuniary matters, which were considerably embarrassed. As far as any understanding between parties or their attorneys in the prosecution of this writ of error is concerned, I can say that I had no understanding with anybody but M'r Partee, who came into my office and told me that he wanted me to attend to a case for him; he stated his case and we agreed that we would do what I have above stated, & we accordingly sued out a writ of error, &c. I know nothing one way or the other as to any understanding between other persons. I think the Partees and M'r Stuart, respectively, thought harshly of each other when they became involved in the litigation about the homestead. I judge of the feelings of the Partees (W. B. & James D.) from their conversation, and of M'r Stuart from his bill against them, in which he

charged them with fraud, &c., very freely and swore to the obligations. I know nothing of the state of feelings between them at the time I sued out the writ of errors, nor at the time of the sale of the Partee lands.

455 In answer to the 6th direct int., he says: James Stuart purchased the land known as the Lake Dick plantation, and James D. Partee the other lands. It is very inconvenient for me to describe by numbers, besides I suppose it is not necessary.

In an answer to 7th interrogatory he says: I know about the suit refer'ed to in the circuit court of Yazoo County, and I was employed to defend it, and am still engaged in it, it being as yet undetermined. This suit was instituted to recover the lands known Lake Dick, which Stuart purchased at the sheriff's sale aforesaid, subject, or has since been so decided by the supreme court, to the homestead exemption of Mr. Partee & family. After this suit was commenced I filed a plea setting up the defence of homestead in the lands sought to be recovered, and thereupon Mess'rs Wilkinson & Bowman, council for Stuart, filed a bill enjoining the Partees from setting up the defence of homestead in the ejectment suit. I answered for the parties, making the answer a cross-bill; obtained a cross injunction, &c. Chancellor Kooker held

456 that there was no right of homestead. The case was taken to the supreme court, and the decree of the chancellor reversed. The original action of ejectment now proceeds in the circuit court.

To the general interrogatory he says: I know nothing more that will be material to the parties on either side.

Cross interrogatories:

In answer to first cross-interrogatory he says: By ref'rence to the file of the Yazoo Banner, I see that the advertisement refer'ed to (a copy of which is annexed to my deposition in chief) was published in the issue of Dec. 18th, 1868, Dec. 25, 1868, & January 1st, 1869.

In answer to 2 cross-int. he says: I think I can say my *resolutions* of the day of the sale is independent of the advertisement, for the reason that in connection with another party on the same day I bought a plantation sold by Col. R. M. Johnson, executor, &c., & it being an important matter to me, the day of sale was impressed on my memory, besides I have since this deposition was commenced examined

457 my deed and verified my memory as to when the (Johnson) sale occur'ed. I am certain that the Partee sale and the Johnson sale took place on the same day; more certain now than I was when I answered in chief, if anything.

In answer to 3d cross-interrogatory he says: I think I would be able to state the day of the Partee sale unaided by the advertisement, because I had the reason first stated for remembering the day, but the reference to the advertisement may have had some influence on my mind. I could not say that I am whol'y uninfluenced by it, for it is impossible for me to analize with perfect accuracy all the sources of my believing that the sale occur'ed on the day named, Monday, January 4th, 1879. Further than that, as I have before stated, I bought some valuable lands on the same day, and my memory is that the day was that just named. My ref'rence to my deed supports my memory, or it states that the Johnson sale took place on Monday, January 4th, 1869.

J. C. PREWETT.

Sworn to and subscribed before me this 27th day of July, 1874.

W. H. MANGUM,
U. S. Commissioner.

458 I, W. H. Mangum, a commissioner in the United States court for Yazoo County, southern district of Mississippi, do hereby certify that John C. Prewett, a witness summoned to testify in behalf of the defendant in a certain cause now pending & undetermined in the circuit court of the United States, southern district of Mississippi, wherein Canal Bank et als. are plaintiffs, and W. B. & Sarah D. Partee are defendants, was permitted by A. M. Harlow, one of the counœl for defendants, to write out his answers to the interrogatories and cross-interrogatories in his own handwriting, which when written was by me examined, and then sworn to & subscribed before me this 27th day of July, 1874.

W. H. MANGUM,
U. S. Commissioner.

EXHIBIT A.

In the Yazoo circuit court.

JAMES STUART
vs.
S. D. PARTEE ET AL. } Vendi.

459 By virtue of the above stated case to me directed, I will expose to sale to the highest bidder for cash, before the court-house door in Yazoo County, on the first Monday of January, 1869, the following described property, to wit:

Lots 3, 4, 5, 6, 7, & 8, & 28 acres in lot 1, sec. 5; all sec. 6; north-east quarter section 8, and south half section 9; the north-east quarter & south half of north-west quarter, & south of sec. 10; west half north-west quarter, & north-west quarter & south half of section 11; all sec. 14; north half and east half of south-east quarter section 15; all of sec. 16; north half and south-east quarter sec. 23; west half sec. 24, township 9, range 4 west; north half sec. 1; north-west quarter sec. 2; north-east quarter sec. 3, township 9, range 5 west; lot 7, sec. 31; lot 7, sec. 32, township 10, range 4 west; lot 6, sec. 34, lot 7, sec. 35, lot 5, sec. 36, township 10, range 5 west; levied on as the property of W'm B. Partee and Sarah D. Partee, subject to defendants' homestead exemption, to satisfy the above stated case.

S. M. DYER,
Sheriff.

Dec. 18th, 1868.
Copy.

460 Answers of S. M. Dyer to interrogatories and cross-interrogatories in a certain cause now pending and undetermined, in the circuit court of the United States, for the southern district of Mississippi, wherein Canal Bank et als are plaintiffs, and W. B. Partee & Sarah D. Partee are defendants, on the part of the def'ts, who, after being duly sworn, deposes as follows:

Ans. to 1st direct int. Yes, I was sheriff of Yazoo County during those years. I was first elected in Oct., 1865. I entered the office sometime in Oct., 1865; I held the office from Oct., 1865, to sometime in March, 1869. I had a deputy all the time. His name was John T. Heth. I made it in writing. He was appointed in writing. I cannot annex a copy for the reason the original cannot be found. The appointment was made in due form of law, and filed in the chancery clerk's office.

I have, and and it cannot be found. It was in the chancery
461 clerk's office. The substance was about as follows:

"I hereby constitute and appoint John T. Heth my true and lawful deputy, for me and in my name to do & perform all acts that I am required by law to do & perform as sheriff of Yazoo County. I hereby ratifying the same.

"Given under my hand & seal this day of 1865."

He did, & during the time that I remained in office.

Ans. to 2 direct int. Yes, there was personal property on the places of W. B. & Sarah D. Partee, because it was claimed by their sons. I don't recollect whether I had such instructions or not, because there was no other property to levy on. The levy was made by my deputy, Heth, on the 9th day of April, 1867, because the personal property was claimed by James D. &. W. B. Partee, sons of W. B. & Sarah D. Partee.

Ans. to 3d direct int. Yes, I did; I did not make but one sale in that case. I made the sale on the 1st Monday in January, 1869. It was made in front of the court house door in Yazoo City, in Yazoo
462 County. The notice was made according to law in such cases. There was a large number of persons present, I don't know how many. It was made at public outcry. It was to the highest bidder. Yes, bids were invited, there was no bids suppressed, it was made fairly. There was none that I know of. I do not. The sale was conducted as sheriffs' sales were usually conducted.

Ans. to 4th direct int. From the lapse of time I cannot recollect, from memory, the day of the month on which the sale was made, but by reference to the Yazoo Banner, a public weekly newspaper published in Yazoo City, I find the sale was made on the first Monday in January, 1869. I do not know that any was ever made.

Ans. to 5th direct interrogatory. The time has been so long that I cannot now recollect. Why the land was not sold at the proper time in 1867, because there was none to be found subject to execution.

Ans. to 6th direct interrogatory. I do not know of any such arrangements. I know of none. The sale was conducted fairly. I do
463 not know of anything that could be of any benefit to either party.

Examination in chief here closes.

Cross-examination:

Ans. to 1 cross-interrogatory. I did not go on the plantation to make the levy.

Ans. to 2 cross-int. I did not go myself nor send a deputy to any one of the places to make the levy.

Ans. to 3d cross-int. I received no such instructions from any one.

Ans. to 4th cross-int. I herewith file a copy of my advertisement made of said sale, showing the date, time, & place thereof.

Ans. to 5th cross-int. I don't know; there was a hundred, more or less. I think so, provided there was no mistake made.

Ans. to 6th cross-int. The notice was made in the Yazoo Banner. I am unable to give the number of insertions or their dates.

464 Ans. to 7 cross-int. I am unable to give copies of those receipts, nor can I recollect after the lapse of five years who did receipt to me for those bids refer'ed to.

Ans. to 8th cross-int. I cannot recollect who I rec'd the instructions from, if any were given.

Ans. 9 int. I cannot recollect whether the lands refer'ed to were sold in subdivisions or aggregated. I do not recollect now whether it was or

not. The lands were sold by numbers according to the advertisement hereto attached, and bid for by bidders accordingly.

Cross-examination here closes.

S. M. DYER.

Sworn to & subscribed before me this 28th day of July, 1874.

W. H. MANGUM,
U. S. Commissioner.

I, W. H. Mangum, commissioner in the United States court for the southern district of Mississippi, do hereby certify that Samuel M. Dyer, one of the witnesses summoned to testify in behalf of the defend-
465 ants in a certain cause now pending and undetermined in the circuit court of the United States for the southern district of Mississippi, wherein Canal Bank et als. are plaintiffs and W. B. Partee and Sarah D. Partee are defendants, appeared & testified as before stated, which deposition being taken down in my own handwriting, and being read over to said witness was by him approved, sworn to, and subscribed this 28th day of July, 1874.

W. H. MANGUM,
U. S. Commissioner.

Exhibit to answer of S. M. Dyer.

In the Yazoo circuit court.

JAMES STUART
vs.
S. D. PARTEE ET AL. } Vendi.

By verture of the above-stated case to me directed, I will expose to sale to the highest bidder, for cash, before the court-house door in Yazoo City, on the first Monday of January, 1869, the following-described property, to wit:

466 Lots 3, 4, 5, 6, 7, & 8, & 28 acres in lot 1, sec. 5, all sec. 6, northeast quarter sec. 8, & south half of sec. 9; the northeast quarter & south half of northwest quarter & south half of sec. 10; west half of northeast quarter & northwest quarter & south half of sec. 11; all section 14; north half & east half of southeast quarter sec. 15; all sec. 16; north half & southeast quarter sec. 23; west half sec. 24, township 9, range 4 west; north half sec. 1, northeast quarter sec. 2, northeast quarter sec 3; township 9, range 5 west; lot 7, sec. 31; lot 7, sec. 32, township 10, range 4 west; lot 6, sec. 34; lot 7, sec. 35, lot 5, sec. 36, township 10, range 5 west, levied on as the property of William B. Partee & Sarah D. Partee, subject to the defendants' homestead exemption to satify the above-stated case.

Dec. 18th, 1868.

S. M. DYER, *Sheriff.*

467 Answers of W. S. Epperson to interrogatories and cross-interrogatories in a certain cause now pending and undetermined in the circuit court of the United States for the southern district of Mississippi, wherein the Canal Bank et als. are plaintiffs and W. B. Partee and Sarah D. Partee are defendants, on the part of the defendants, who, after being duly sworn, deposes as follows.

CAMPBELL & BOWMAN,
For Plaintiffs.
NUGENT & HARLOW,
For Defendants.

Ans. to 1st direct int. I was a practiceing lawyer in Yazoo City in 1867 & 1868. No; I did not recieve any such claims for collection in those years against Sarah D. Partee & W. B. Partee.

Ans. to 2 direct int. I did not recieve any such claims during the years 1867 & 1868.

Ans. to 3d direct int. I recieved no claims against Sarah D. Partee & her husband in 1867 & 1868. We had in our hands in July, 1866, the following claims against Sarah D. Partee: Two notes for five
468 thousand dollars each, dated January 5th, 1861, payable 27th January, 1862, to order of, and indorsed by, Rotchford, Brown & Co. One note of Sarah D. Partee for $2,700.00 dollars, dated Feb'y 4th, 1861, payable March 11th, 1862, to the order of and endorsed by S. Nelson & Co. The first two of the above-stated notes were held by the New Orleans Canal Banking Company; the third-mentioned note was held by the Citizens' Bank of Louisianna in June, 1866. We recieved for collection from the Crescent City Bank a note against Sarah D. Partee for five thousand dollars, dated Feb'y 4th, 1861, and payable March 20th, 1862, to order of, and endorsed by, S. O. Nelson & Co. All of the above claims were sent to us for collection by Hyams & Jones, attorneys of New Orleans. I believe all of the above-mentioned claims were embraced in a deed in trust executed by W. B. & Sarah D. Partee on the 17th day of November, 1866, to Robert Bowman, trustee, but am not sure the deed in trust will show. I do not know why the deed in trust was not resorted to as a means of securing such claims. The above claims were not disputed as far as I know. I believe these claims
469 had been sued before said deed in trust had been executed. I understood that our clients accepted the terms of the trust-deed. I do not now remember that I ever communicated anything to Robert Bowman on this subject.

Ans. to 4 cross-int. I cannot state whether or not I advised our clients of having obtained payment on said claims. I knew of a judgment against Sarah D. Partee & her husband in favor of James Stuart. I do not know that our clients had any knowledge of the judgment in favor James Stuart against Sarah D. Partee & her husband. I knew of the proposed sale of Partee's land on the day the sale occurred. I cannot say whether our clients had information of such sale. I do not now remember whether or not I advised them of such sale. I relied upon the good faith of the parties to the trust-deed. I was in Yazoo City on the day of said sale. I cannot say whether I advised our clients or not of the sale of Partee's land under the Stuart judgment. Whatever letter of advice on that subject, if any, was addressed to Mess'rs Hyams & Jones, of New Orleans, with whom we alone corresponded on this subject. I cannot now state that I ever advised Mess'rs Hyams
470 & Jones, or our clients through them, to buy any of the lands of Sarah D. Partee. If I ever wrote such a letter I do not find it copied in my letter-book, nor do I find any reply to it on file in my office. It is my habit to copy all my business letters, and to preserve & file all business letters that I recieve.

Lastly, I know of nothing further on this subject that could be of any benefit to the parties.

Examination-in-chief here closes.

Cross examination by Nugent & Harlow:

Ans. to 1st cross-int. The original of said claims are not now in my possession; they are on file in the office of the circuit clerk of Yazoo County, & I cannot, therefore, give copies of them. I do not rem'ber

when suits on said claims were instituted, nor the date, or amount of any judgment obtained thereon.

Ans. to 2 cross-int. Hyams & Jones did express surprise & astonishment at learning of such sale under the Stuart's judgment, and that they had not been notified of such sale by the trustees in said trust-deed.

471 Ans. to 3d cross-int. I have in my possession two original letters, one dated Feb. 26, and one dated March 8th, 1869. Both written by Hyams & Jones, of New Orleans, addressed to and recieved by Mess'rs Miles & Epperson, of Yazoo City, Miss., of which latter firm I was then and am a member. These original letters I herewith file as a part of my answer, marked "Exhibits No. 1 & 2." I have also in my possession what purposes to be a copy of a letter addressed by Hyams & Jones, of New Orleans, under date of March 8th, 1869, to Mess'rs Wilkinson & Bowman, Yazoo City, Miss.; this copy I herewith file as a part of my answer, marked "Exhibit No. 3." This copy was sent to my firm by Mess'rs Hyams & Jones of New Orleans.

I refer to interrogatory 4th for my answer to this question, being cross-interrogatory 5.

W. S. EPPERSON.

Sworn to and subscribed before me this 13th day of August, 1874.

W. H. MANGUM,
Commissioner in Chancery.

I, W. H. Mangum, a commissioner in the United States court
472 for the southern district of Mississippi, in and for Yazoo County, in said district, do hereby certify that W. S. Epperson, a witness summoned to testify in behalf of defendants in a certain cause now pending and undetermined in the circuit court of the United States for the southern district of Mississippi, wherein the Canal Bank et als. are plaintiffs, and W. B. Partee and Sarah D. Partee are defendants, appeared & testified as before stated, which deposition was taken down by me in my own handwriting and being by me read over to said witness, was by him approved.

Sworn to and subscribed before me this 13th day of August, 1874.

W. H. MANGUM,
U. S. Commissioner.

EXHIBIT No. 1.

NEW ORLEANS, *Feb'y 26th*, 1869.

Mess'rs MILES & EPPERSON,
Yazoo City, Miss.:

GENTLEMEN: In Nov., 1866, M'r's Partee, aided & assisted by her husband, executed to Robert Bowman a deed of trust in favor of her creditors of a certain plantation, & also an absolute deed of certain
473 lands & which is in our possession, but is recorded in book X of records. pages 129, 130, 131, 132, 133, 134, 135, & 136, Nov. 9th, 1866. We had in your hands some of these claims & held some others for creditors here. It was a compromise at 50% face & 5 years; the title & securities were considered & we accepted & requested you to discontinue suit, &c., and we have been patiently expecting payment of those which are due, as well as for our just clients and others, as for our joint fees not yet realised. We have recently been given to understand that the

property call' for by the deed, or more properly the plantations, have been sold out by some previous liens or mortgage, & we hasten to inquire of you the facts. We have given the date of recording of the deed, but if you prefer it we will send you the original. If these incumberances existed, the parties executing the deed are liable to the imputation of misrepresentation if not worse *if not worse.* Please examine & advise us.

You's, resp'ly,

HYAMS & JONES,
Attorneys.

474 *Exhibit No. 2 to W. S. Epperson's deposition.—Filed Aug. 13th, 1874.*

NEW ORLEANS,
March 8th, 1869.

Mess'rs MILES & EPPERSON,
Yazoo City, Miss.:

D'R SIRS: We have your recent letter of the 1st inst. in answer to ou's of the 26 ult. The creditors we represent on o'r joint collection, &c., the Canal Bank & Crescent City Bank and also the Union Bank & Slark, Staffer Co., whose claims were also in our hands at the time of the execution of the trust-deed Nov., 1866, are very much dissatisfied & would be willing to pay a contingent fee on a successful effort to save their debts. This is a gross attempt at fraud on the part of M'r Partee & his wife, and our principals & ourselves are surprised that no notice was given to them or us by the trustee, M. Bowman, & so we so say in our letter of this date to Mess'rs Wilkinson & Bowman, a copy of which we now enclose informing those gentlemen to confer with you on this matter. Please write us as soon as practicable. We can send you the original deed & Mess'rs Wilkinson & Bowman's letter & also M'r Partee's propositions in writing in the name of his wife.

Yours, very truly,

HYAMS & JONES.

475 *Exhibit No. 3 to W. S. Epperson's deposition.—Filed August 13th, 1874.*

NEW ORLEANS, *March 8th*, 1869.

Mess'rs WILKINSON & BOWMAN,
Yazoo City, Missi.:

GENTLEMEN: We have recently learned with much surprise & disappointment that the Partee property deeded in Nov., 1866, to your M'r Robert Bowman, for the benefit of M'r's Partee's creditors named in the trust deed, had been sold under a previous lien. We represented four of those creditors, to wit, N. O. Canal & Banking Company for $10,000; the Crescent City Bank for $4,000; the Union Bank of L'a, $4,415, & to Slark, Stauffer & Co., $1,000. On this subject we received a letter from y'r firm, dated Nov. 21st, 1866, in which you stated that you had examined the records, and that the property was free from incumberence, except the $1,000 annuity under M'r Dicks' will, & also a judgment for about $5,000, which, you say, the plaintiffs will settle on favorable terms.

This letter, accompanied by the deed of trust, was presented to
476 us by Mr. Partee, & coupled with a writ'en application to the creditors was the inducement to the creditors which we represented, & doubtless the others, to stop proceedings & accept the deed, and give up the original notes.

Mr. Partee. in his writing & conversations, made it a point that M'r's Partee wished all her creditors to share equally in her property, & that the method was taken to prevent any would not come into the measure from obtaining judgment, and thus obtain an advantage over the others. The creditors we represented (and the others doubtless) were willing to risk the Dick an'uity but not the judgment. We had conversations with the trustee in our office, & it was not contemplated that the judgment mentioned in your letter was to remain unsatisfied at once, or at least to be so disposed of as not to interfere with the debts secured by the trust deed; the actions under that previous judgment has been complete surprise to the creditors whom we represent, they consider that they at least should have had some tim'ly notice from the trustee of the action that was about being had to defeat their debts. If any intimation had been given they would have taken steps to have satisfied the judgment rather than to have been cut off. The
477 object of this letter is to ask from M'r Bowman such an explanation as will enable us to present it to our principals, and to take such action, if any opportunity is left them in law or equity, whereby they can retrieve their loss in whole or in part, & we will request from you any suggestion you may make in their behalf.

Mess'rs Miles & Epperson of your city are the gentlemen in whose hands were placed by us for joint collection a/c the notes held by us for the Canal & Crescent City Banks, & we would request you to consult with those gentlemen for the purpose of ascertaining how far the wrong our clients have suffered can be retrieved.

We have no authority at this time to speak of other creditors than those above named, whom we represent. But we have little doubt that most of the others would join in any proceedings it might become advisable to institute in their behalf.

Very resp'ly, y'r ob't s'ts,

HYAMS & JONES,
Att'ys, 143 *Gravier St.*

478 STATE OF MISSISSIPPI,
Yazoo County:

I, W. H. Mangum, a commissioner in the United States court for the southern district of Mississippi, in and for Yazoo County, State aforesaid, do hereby certify that I called on N. G. Nye at his residence, near Yazoo City, for the purpose of taking his deposition in a certain cause now pending & undetermined in the circuit court of the United States for the southern district of Missi., wherein the Canal Bank et als. are plaintiffs, and W. B. Partee & Sarah D. Partee are defendants. That I found said Nye in such an enfeebled state of health, from long protracted illness, that he was both physically & mentally unable to testify in the above-state' case; and that W. R. Miles is not a citizen of my county, therefore, I am unable to reach him.

Given under my hand & seal this the 14th day of Aug., 1874.

W. H. MANGUM,
U. S. Commissioner.

479 And afterward, to wit, on the 17th day of Oct., A. D. 1874, the amended answer of Robert Bowmman was filed in the clerk's of said court, which, with the exhibits thereto, are in the words & figures following, to wit:

(Indorsed:) Filed Oct. 19th, 1874. Geo. T. Swann.

185. Equity.

To the honorable the circuit-court judge of the United States for the southern district of Mississippi, in equity setting:

The amended answer of Robert Bowman to a bill of complaint exhibited against himself & others by the Canal Bank & others in this honorable court.

This respondent, saving and reserving, &c., for an amendment to his original answer, says that he was called on by the bill in this cause to file copies of his letters between James Stuart & Wilkinson & Bowman, a law-firm of which this respondant was a member, and this respondant individually, touching a suit in the circuit court of Yazoo County, Mississippi, in which James Stuart was plaintiff and W. B. Partee & Sarah D. Partee, his wife, were defendants.

480 This respondant says that the said firm of Wilkinson & Bowman's & this respondant kept our copies of the letters to James Stuart on said matter, and at the time of filing his original answer the said Stuart was beyond the United States and resident of Ireland of the Kingdom of Great Britain, and upon the request of this respondent the said Stuart returned the original letters of Wilkinson & Bowman & of this respondant, copies of which as well as Stuart's are herewith filed, marked "Letters, exhibits to amended bill," *to* which are prayed to be made part of this answer.

Respondant prays that this his amended answer be incorporated into & made part of his answer, having fully annexed, &c.

ROBERT BOWMAN.

UNITED STATES OF AMERICA,
Southern District of Mississippi:

Before me, Henry S. Footipe, a United States commissioner at Carelton, for the district aforesaid, personally appeared Robert Bowman, whose name is signed to the foregoing answer, and upon oath says that the facts set forth therein as of his own knowledge are true, and those state' on the knowledge & information of others he believes to be true.

ROBERT BOWMAN. [SEAL.]

Sworn to & subscribed before me this 4th day Aug., 1874.

H. S. FOOTIPE,
U. S. Commissioner.

481 EXHIBIT 1.

NEW ORLEANS, *January* 26, 1866.

E. C. WILKINSON,
Yazoo City:

DEAR SIR: You will find attached *of* copy of M'r's Sarah D. Partee for collection, to which I ask your early attention. I will forward the original if an opportunity offers, or you may find some person coming to the city whom you would authorise to recieve and reciept for it to Rich'd Nugent & Co., 192 Comon st., who have my papers in their possession. Have the goodness to advise me what may be proposed in regard to this debt, as it is not my wish to sue unless forced so to do *so*.

Very respectfully,

JAMES STUART.

$5,397.87]

NEW ORLEANS, 18 *Dec.*, 1861.

Twelve months after date I primise to pay to the order of Rotchford, Brown & Co., at their counting-house in this city, fifty-three hundred & seventy-seven $\frac{87}{100}$ dollars, value received, with eight per cent. per annum interest after maturity untill paid.

(Signed) SARAH D. PARTEE.

Authorized by me.

W. B. PARTEE.

(Copy.)

EXHIBIT 2.

NEW ORLEANS, 15*th August*, 1866.

Messrs. WILKINSON & BOWMAN,
Yazoo City:

DEAR SIRS: Your esteemed favor of the 30th ultimo is at hand, and I particularly note contents. I have to thank you for the prompt manner in which you have attended to my buisness in the Partee matter, to say nothing of the cheering news you send me with regard thereto. M'r Partee called on me some time since, and left with me a memorandum of the proposition you now al'ude to, which I concented to think on, but I never for a moment entertained the idea of accepting such a settlement, and M'r Partee must have known that I could not, in my condition, encumber myself with dead weight (which the land would be to me) when there was the faintest prospect of recovering my money, or at least a considerable portion of it. I entirely concur with you as to the lein he proposes to give, and unequivocally decline such a settlement. M'r Partee is well aware that my necessitees compel me to collect all the ready money that I can, and as regards set'ling my claim by installment he must understand that they must be placed in such a state as to insure beyond a peradventure the eventual payments
483 thus proposed, and that only after a liberal reduction has been made of the debt in cash at date of settlement.

Very respectfully,
(Signed) JAMES STUART.

EXHIBIT 3D.

NEW ORLEANS, 1*st March*, 1867.

Mess'rs WILKINSON & BOWMAN,
Yazoo City, Missi.

GENTLEMEN: Your favor of the 24th ult is at hand and contents particularly noted. As regards to the Partee case, I have little to add to what I have already said in writing & personally to your M'r Bowman, when in this city; that I want my money; that I left the case entirely with you to act as you would for yourselves. I have no confidence whatever in M'r Partee, and should you conclude to give him the time you mention, I hope, by doing so, you will not loose any of what you have already gained; but, if possible, make the security still more secure, so that the payments will be promptly met without fail, at maturity.

Very respectfully,
(Signed) JAMES STUART.

484 P. S.—In giving M'r Partee the time you mentioned, it will be well to make him relinquish all claims to those new laws giving him time, as when the payments becomes due, he might bring forward those claims a second time. Ntell you again I have no confidence in him. I hope you understand my meaning.

JAMES STUART.

EXHIBIT 4.

NEW ORLEANS, 29 *Oct.*, 1867.

Miss'rs WILKINSON & BOWMAN,
Yazoo City. Missi.

GENTLEMEN: Not having heard from you since Feb'y last, I feel anxious to know the result of the execution. You then wrote me you had issued & levied. I also notice in a Yazoo paper, J. S. vs. S. D. Partee, the land advertised for sale. At your convenience, I would be glad to hear from you as to the present state of the case, and what are the future prospects. I remain,

Respectfully,

JAMES STUART.

EXHIBIT No. 5.

NEW ORLEANS, 13*th Sept.*, 1869.

Mess'rs WILKINSON & BOWMAN,
Attorneys-at-Law, Yazoo City, Miss.

485 GENTLEMEN: Yours of 10th inst. to hand and contents particularly noticed.

The "Lake Dick place," in its present state, is of no use to me. I wrote on same date as yours on the subject of the homestead.

I am ignorant of what land is worth, but like it to net me $10,000, part cash, & part on time made equal to cash; which would not pay me more than the judgment & losses with 8 % per annum interest. Hoping to hear from you soon on the subject,

I remain, very resp'tf'ly,

JAMES STUART.

P. S.—Since writing the above I have had a conversation with a person who says that ten thousand dollars will be no price for that land, but let thatgo for what it is worth, although he is well acquainted all up the Yazoo. However, make no disposition of it till you write me your views on the matter. You are aware that I know nothing of the value of lands and would like much you would write me on reciept.

(Sg.) JAMES STUART.

486 EXHIBIT No. 6.

NEW ORLEANS, *Sept.* 10, 1869.

Mess'rs WILKINSON & BOWMAN,
Attorneys at Law, Yazoo City, Miss.

GENTLEMEN: I believe I have not had the pleasure since January, 1868. Since then you have got judgment and sold out Partee, leaving sum' $3,000 still unpaid. The Lake Dick place bought in for me. Partee claiming the homestead, which, as it were, taking the cream off the place; so, if I had got the improvements, I have no doubt I could

have rented it. How Partee can claim this as his homestead I cannot imagine, as this property was bought long after he occupied and lived on "No Mistake" plant., which he did up to & during a part of the war, and which was left M'r's Partee by M'r James Dick, for which see a copy of M'r Dick's will, in the hands of M'r E. Drenning or yourselves. However, as crops are good, and finding you are determined to try the homestead, a case to which, I think, you have every right in law & equity. Partee may buy my judgment if he would, & you think well of it, you might let him have it for its face for cash. In the mean-
487 time I think it would be well to finish the whole matter, balance of judgment & homestead, before the crops are gathered.

Very respectfully,

JAMES STUART.

EXHIBIT 7.

NEW ORLEANS, 15*th May*, 1871.

ROBERT BOWMAN, Esq.,
Attorney-at-law, Yazoo City, Miss.:

DEAR SIR: Your last favor was dated 21st January, in which you say the question of Partee's homestead exemption will be determined next April. Now that April is past and in the middle of May, and not having heard from you, I feel anxious to know the result. Had I the homestead it could probably be rented or sold, as it is a loosing business paying taxes, which are very high, and getting nothing from it. Please write me a few lines on receipt, & ob'ge

Yo'rs, respectf'ly,

JAMES STUART.

EXHIBIT 8.

NEW ORLEANS, 6*th Dec.*, 1867.

Mess'rs WILKINSON & BOWMAN,
Attorneys-at-law, Yazoo City, Miss.:

488 GENTLEMEN: I wrote to you on the 17th Sep't, and have heard nothing from you since. From the tenor of your letter of the 13th Sept., I was led to believe you were going to test Partee's right to the homestead, which I hope you have done, as the case stands in a very unsatisfactory attitude. There, in the event of having a favorable offer to purchase, I could not avail myself of it, as long as the homestead question is unsettled.

I respectfully, but particularly, request to have the matters tested if you have not already done so.

And I remain very resp't'f'ly,

JAMES STUART.

EXHIBIT 9.

NEW ORLEANS, *Sept.* 17*th*, 1869.

Mess'rs WILKINSON & BOWMAN,
Yazoo City, Miss'i:

GENTLEMEN: You's of the 13th inst. is to hand & contents noted. I did think it strange after the battle was fought that I did not hear from you, but having unlimited confidence in you, I scarcely gave it a thought, and am pleased now that you wrote me, although I did not recieve your

letter. It was no fault of mine, as I gave you my address in my
489 letter of 28th January, if not previous; but all is well that ends well. As regards my offering or making any suggestion as what would be best to do I am ut*'al*ly at a loss.

You commenced the case, you brought it to a point satisfactory to me, and I think the best thing I can say after perhaps saying too much to be of any use, is for you to go ahead and work for me as it were for yourselves; I ask no more. I will be satisfied, and still more so, if you gain the homestead, & the balance of my debt.

Yours, respectfully,

JAMES STUART.

EXHIBIT No. 10.

NEW ORLEANS, 14 *January*, 1871.

Mess'rs WILKINSON & BOWMAN,
Attorneys-at-law, Yazoo City, Miss.:

DEAR SIRS: Not having heard from you since I wrote you in June last, am, of course, anxious to know if any progress has be'n made with the Partee matters, as it is very important that it should be decided before the time to plant next year's crops; but I know we must wait for the law to take its course. I should be glad to put it to some use, & not having it lying idle; perhaps you could advise me if anything can be done to make it pay som'thing.

Very resp'tf'ly,

JAMES STUART.

490 EXHIB. 11.

YAZOO CITY, *Feb'y 12th*, 1866.

Mr. JAMES STUART,
New Orleans:

DEAR SIR: Your favor of 26th January last, including copy of note of Sarah D. Partee for $5,397.87, is received. M'r's Partee is perfectly good for the money. Mess. Hogan & Patton, 188 Gravier street are authorised to receipt in our name for the claim.

Resp'tf'ly, y'r ob'ts s'v'ts,
(Signed) WILKINSON & BOWMAN.

EXHIB. 12

YAZOO CITY, *July 30th*, 1860.

Mr. JAMES STUART,
New Orleans:

DEAR SIR: Your favor of a late date to M'r E. Drenning has been shown us. We cannot advise the acceptance of M'r Partee's proposition. Your claim is now perfectly secure, and the money will be forthcoming next spring, and it is for you to say what time, if any, you will give him; but we have reason to believe that the land proposed to be sold to you is almost, if not entirely, unsaleable and worthless.

You's, resp'tf'y,
(Signed) WILKINSON & BOWMAN.

491 EXHIB 13.

YAZOO CITY, *Dec. 4th*, 1866.

M'r JAMES STUART,
New Orleans:

DEAR SIR: Your favor of a late date is recieved and contents noted. We have nothing to add to what we have already said as to our opinion of the saf'ty of your claim against Partee & wife, except that we expressly refused when we drew the deed trust from them to include your debt in it, for the reason that yours was already a *lein* & the only *lein* on their property. Of course, however, if you choose to abate any of your debts against M'r Partee we can have no objection.

Respectf'ly,
(Signed) WILKINSON & BOWMAN.

EXHIBIT 14.

YAZOO CITY, MISS., *Feb'y 24th*, 1867.

M'r JAMES STUART,
New Orleans:

DEAR SIR: We have had execution in your case against M'r Parte issued & levied. Under a recent act of the legislature he can take the case to the Supreme Court, upon giving bond for the costs, or he can enjoin the judgment without bond. He requests us to give him
492 an extension of time within which to pay, say, one-half next fall, and the balance in one year after. If M'r Parte will pay we would advise the giving of time as he can get it on account of the late laws mentioned above, which were recently passed by the legislature as relief measures. Let us hear from you as soon as possible.

Yours, very truly,
(Signed) WILKINSON & BOWMAN.

EXHIBIT 15.

YAZOO CITY, MISS., *January 24th*, 1868.

M'r JAMES STUART,
New Orleans:

DEAR SIR: We recieved a message through M'r Drenning from you a few days since, in relation to your case against M'r Partee & wife. All of their property, which is very large, is bound for your debt and it can be made if we are directed to sell. We do not think it will ever be made without, but as we are in doubt as to what arrangement & agreement have been made between M'r Partee & yourself, we wish express direction from you what to do, and we have to put you on your guard against giving any time for any definate period, as such an agreement would postpone your *lein* to junior judgment, & thereby loose your debt.

Y'rs resp'tf'ly,
(Signed) WILKINSON & BOWMAN.

493 Ex. 16.

YAZOO CITY, MISS., *Sept 10th*, 1869.

M'r JAMES STUART,
New Orleans:

DEAR SIR: On yesterday we had a call from M'r Ware, of Vicksburg,

with a view of buying Lake Dick. There are frequent inquiries for swamp lands, and they are coming into demand. We wish to know if the place is for sale, & if so, upon what terms.

Yours respectf'ly,
(Signed) WILKINSON & BOWMAN.

Ex. 17.

YAZOO CITY, MISS., *Sept. 13th*, 1869.

M'r JAMES STUART,
New Orleans:

D'R SIR: We have recieved your favor of the 10th inst. Immediately after the sale of Partee's land under your execution, as well as before, we wrote to you but our letters were returned not delivered. We though' of suing Partee for the rent of "Lake Dick," which will test his right to the homestead. We think the place can be sold advantageously this fall or winter. We have a good many ap'lications for lands and have advised parties wishing to purchase to examine "Lake Dick," stating that we thought you would sell it for the amount of your judgment.

There is a decree in favor of the estate of Christopher Tood
494 against Partee & wife under M'r Dick's will, which binds the "No Mistake" lands for about $8,000. If the lands are sold under this decree, by bidding over the amount thereof to the amount due you we think you can make the balance of your money.

Yo'rs truly,
(Signed) WILKINSON & BOWMAN.

Ex. 18.

YAZOO CITY, MISS., *Dec. 9th*, 1869.

JAMES STUART, Esq.,
New Orleans:

DEAR SIR: Your favor of the 5th inst. recieved. We have given notice to Partee to deliver up possession of the place on the 1st January next.

Yours truly,
(Signed) WILKINSON & BOWMAN.

Ex. 19.

YAZOO CITY, MISS., *April 21st*, 1870.

JAMES STUART, Esq.,
New Orleans:

DEAR SIR: Enclosed we send you a bill of complaint against W. B. Partee & others to be sworn to by you. Let the affidavit be before a commissioner of the State. M'r A. J. Herd (Commercial Place, we believe is his place of business) is one who understands his business very
495 well. When sworn to, return to us. We have brought suit for the lands as well as rents. The only contest will be about the homestead. If we succeed, the place will be worth, we think, at least ten thousand dollars.

Yours very truly,
(Signed) WILKINSON & BOWMAN.

Ex. 20.

YAZOO CITY, MISS., *June 30th*, 1870.

M'r JAMES STUART,
New Orleans:

DEAR SIR: We herewith enclose you a bond for injunction in the Partee case. Sign it & return to us as early as you can. M'r Drenning promises to get the sureties on it. We would have sent it before this, but we had no judge to grant the fiat.

Yours truly,
(Signed) WILKINSON & BOWMAN.

Ex. 21.

YAZOO CITY, MISS., *Jan'y 21st*, '71.

JAMES STUART,
New Orleans:

DEAR SIR: Your favor of late date recieved. The question of Partee's homestead exemption will be determined next April. I think
496 from proof already made, that his claim cannot be sustained. Will perhaps see you next week in New Orleans.

Yours truly,
(Signed) ROB'T BOWMAN.

Ex. 22.

YAZOO CITY, MISS., *May 22nd*, 1871.

JA'S STUART,
New Orleans:

DEAR SIR: Your favor of the 25 inst. is at hand. The case of yourself against Partee for the homestead on "Lake Dick" was not tried at the April term of our court, as all the testimony was not in, & Partee's counsel claimed the full time for taking it. I hope we will be able to try it in July next.

Yours truly,
(Signed) R. BOWMAN.

497 PROOF BY COMPL'TS.

The President of the United States to R. B. Mayes, esqr., a commissioner of the United States for the southern district of Mississippi, greeting:

Be it known that in confidence of your skill & discretion, you have been appointed and are hereby invested with full power and authority to examine on their oaths Lumar Fontaine, N. T. Pugh, W. H. Carisey, C. H. McAlpine, Isaic Stallsworth, W. W. Wildy, and R. A. Barkley, witnesses in behalf of the complainants, in a certain suit in equity between the Canal Bank of Louisiana & other complainants, and William B. Partee & others, defendants, No. 185, U. S., now pending and undetermined in the circuit court of the United States for the southern district of Mississippi, upon the interrogatories & cross-interrogatories annexed to this commission; and, therefore, we command you that you cause the said witnesses to come before you at a time & place to be by you appointed for that purpose, and then and there examine the said witnesses upon oath touching the said annexed interrogatories, and reduce

the said examination into writing and send the same direct up,
498 and in your seal, into our said court at Jackson before the judge of said court with all convenient speed, and annexed to this writ.

Witness the honorable M. B. Daite, Chief Justice of the Supreme Court of the United States and seal of said circuit court hereto affixed, at Jackson, in said dist., this 22d day of June, 1874.

GEO. T. SWAN, *Clerk.*

499 And afterwards, to wit, on the 16th day of November, A. D. 1874, the following depositions of N. T. Pugh & others was filed in the clerk's office of said court, which, with the exhibits thereto, are in the words & figures following, to wit:

(Endorsed:) Filed Nov. 16th, 1874. Geo. T. Swan, clerk.

Circuit court of the United States, southern district of Missi. In equity.

CANAL BANK ET ALS. *vs.* W'M B. PARTEE ET AL. } 185.

Int. to be propounded to Lamar Fontaine, citizen of Yazoo City. When answered thereto, are to be read as ordered at the hearing in behalf of complainants.

Int. 1. State your place of residence & business, and if surveyor & civil engineer, how long you have follow'd that business.

Int. 2. Examine the land-map, & state all you know about it, whether a correct description of the land or not, by whom said map was made, whether for atlas or not, and whether the quantity of cleared
500 land in the plantation named thereon incerted, is correct or not.

Int. 3. State whether you are acquainted with the lands designated on said map, to whom they belonged in the years 1866, 1867, & 1868, and what was the value of each, and the aggregate value of the whole, in April, 1867, and January, 1869, and what is their present value.

Int. 4. What would be a fair rent value for said plantation during the years 1866, 1867, 1868, 1869, 1870, 1871, 1872, 1873, & 1874?

Int. 5. State anything else you may know that will be of advantage to either party to this suit.

NUGENT & YERGER, *Pl'ffs.*

Circuit court of the United States, southern dist. of Miss. In equity. 185.

CANAL BANK ET AL. *vs.* W. B. PARTEE ET AL.

501 Cross-interrogatories to be propounded to Laman Fontaine, a citizen of Yazoo City, & a witness for complainant, which, with the answers thereto, are to be read as evidence in the above case.

X-int. Were not lands in Yazoo County depreciated in value in 1869, compared with the fall of 1866, & what was the dif'erence in said depreciation?

X-int. 2. In the years 1866 & 1867, did not plantations in Yazoo County, as a gineral rule, suffer heavy losses by their planting operations? Was there any profit made by them, except in rare instances?

BOWMAN & CAMPBELL.

In the circuit court of the United States, southern district of Missis. In equity.

CANAL BANK ET ALS.
vs.
W'M B. PARTEE ET AL.

502 Interrogatories to be propounded to N. S. Pugh, a citizen of this State, resident of Yazoo City, whose answers thereto are to be read as evidence in the trial of this case in behalf of the complainant.

Int. 1. State your place of residence & business, & if deputy chancery clerk, how long you have been such deputy, and whether the bonds of public officers of Yazoo Co. are in your custody, and whether the records and archives of the old probate court of Yazoo County are in your custody.

Int. 2. Please examine the proper records of your office, & in your custody, and state whether or not S. M. Dyer, sheriff of said county, ever gave any bonds to collect the liquidatory sum due; and, if so, when & how many, and file copies thereof with your deposition?

Int. 3. Examine carefully and file with your deposition copies of all written deputations appointing deputies, made by S. M. Dyer, & filed in the probate clerk's office, and state whether they are the bonds & deputations ever filed by said S. M. Dyer, sheriff.

Int. 4. State anything else you may know that will be of advantage to either party in the above suit.

NUGENT & YERGER, *Sol.*

503 In the circuit court of the United States, southern district of Mississippi. In equity.

CANAL BANK ET AL.
vs. 185.
W. B. PARTEE ET AL.

Cross-interrogatories to be propounded to N. T. Pugh, a citizen of Yazoo City, Miss., a witness for complainant, which, together with the answers thereto when taken, will be read as evidence in the above cause.

Cross-int. If you answer that you are deputy clerk of the chancery court of Yazoo County, Miss., then state if there is a decree upon the minutes of said court in favor of Edward Drenning, administrator of Christopher Todd, deceased, against W'm B. Partee & Sarah D. Partee for the sale of certain lands owned by Sarah D. Partee, known as the "No Mistake" plantation; and, if so, annex certified copy of said decree as exhibit to your answer to this interrogatory.

504 Cross-int. 2. Is there anything of record in your office to show that said decree was satisfied in January, 1869?

R. BOWMAN,
J. A. P. CAMPBELL,
Solicitors for Def't.

In the circuit court of the United States for the southern district of Miss. In equity.

CANAL BANK ET ALS.
vs. } 185.
W'M B. PARTEE ET AL.

Interrogatories to be propounded to W. H. Cansey, C. H. McAlfinee, Isaic Stallworth, W. B. Wildy, and R. A. Barkly, citizens of Mississippi, residents at Satartia, in Yazoo County, whose answers will be read as evidence at the hearing in behalf of the complainant.

Int. 1. State your place of residence & business during the years 1866, 1867, 1868, 1869, & 1870.

Int. 2. Please state whether or not you were acquainted with
505 W'm B. Partee, Sarah D. Partee, and James D. Partee, his son, during the years named. If yea, please state where they resided during said years & what business or occupation they follow'd.

Int. 3. State, if you can, what personal property Sarah D. Partee & William B. Partee, her husband, owned during each of said years, in what it consisted, how many mules, cattle, hogs, sheep, horses, or other property, including merchandise, and their value, as near as you can.

Int. 4. State who lived on the Lake Dick plantation, formerly owned by Sarah D. Partee, during the years 1870 & 1871, and who cultivated the same; whether you went on said plantation to make settlements with the hands or laborers during either of said years; who attended to the business with you, and whether James D. Partee had anything to do with it or not.

Int. 5. Please state whether or not you are acquainted and how long you have been acquainted with the plantations formerly owned by Sarah D. Partee, in Yazoo County, Mississippi; give the names of said places, and what would be a fair value of said plantations during the
506 years 1866, 1867, 1868, 1869, 1870, 1871, 1872, & 1873; what amount for same and what is the aggregate.

Int. 6. Please state, if you can, what amount of property William B. & Sarah D. Partee had on said plantations during the years 1867, 1868, 1869, and where said W'm B. &. Sarah D. Partee were living during the years named and during the year 1870, and what was their business.

Int. 7. What relationship does James D. Partee bear to W'm B. & Sarah D. Partee? Is he not their son? What business did he follow during the years from 1866 to 1870? Where and with whom did he reside?

Int. 8. Please state, if you can, whether said James D. Partee, during said years, had any property in his own right & independent of his father & mother; whether he had any independant credit or not, in what his property consisted, and who superintended & defrayed the farming operations on said plantations during the years named; who actually controlled and claimed the crops, and by whom all supplies were obtained and at whose cost.

Int. 9. State, if you can, the quantity of cleared land on said
507 plantations, and what was their separate & aggregate value in April, 1867, & Jan'y, 1869.

Int. 10. State anything else you can which may be of advantage to either party to the above suit.

NUGENT & YERGER,
Sol'rs.

Formality waived. Consent given of comr. at once to take depositions of witnesses or answers int. & x-cross, waiving exception above to competency or relevance of answers & questions.

R. BOWMAN,
J. A. P. CAMPBELL,
Sol. for Def't.

In the circuit court of the United States, southern district of Mississippi.
In equity.

CANAL BANK ET AL.
vs.
W. B. PARTEE ET AL.

Cross-int. to be propounded to W. H. Cary, C. H. McAlpine, Isaac Hollworth, W. W. Wildy, & R. A. Barkley, citizens of Miss., &
508 residents at Satartia, and witnesses for complainants in the above-stated cause.

X-int. 1st. If you answer yea to the 3d int.-in-chief, then state fully how you know the fact that they owned personal property; where was said property; how did Sarah D. & W. B. Partee acquire the same, & when?

X-int. 2. Who cultivate the lands in Yazoo County, Miss., owned by Sarah D. Partee, known as "No Mistake," "Tyrone," and "Lake Dick" plantations during the years mentioned in interrogatory 1st-in-chief? Who claimed to be the owner or owners of the personality thereon?

X-int. 3d. If you answer yea to 4 interrogatory-in-chief, then state the sources of your knowledge. Were you present at the contract with the laborers? How do you know on whose account said plantation known as "Lake Dick" was carried on? How many acres of said plantation was in cultivation during the years mentioned in first interrogatory-in-chief?

X-int. 4. If you answer yea to 6th interrogatory-in-chief, then state how you know the fact that said William B. & Sarah D. Partee owned said personality, from whom, when, & how did they ac-
509 quire? Was or not all their horses, mules, cattle, & other stock on said plantation destroyed & captured & carried away by the contending armies during the late war? What amount of mules, horses, cattle, & other stock did William B. & Sarah D. Partee have on said plantations at the close of the late war? Is any, name the kind, number, & value of each. Do you know who purchased or owned the stock on said plantations named in 6th interrogatory-in-chief?

X-int. 5. Do you or not know that James D. Partee recieved a large sum of money from D'r Bonney, or his representatives, after the war? & if so, state the amount and on what account.

X-int. 6. Did you or either of you have any dealings with or on account of said plantations during said years? If so, with whom & in whose name were said dealings had?

X-int. 8. If you state, in answer to 8th interrogatory-in chief, that James D. Partee had no property in his own right independant of his father or mother, and that he had no credit, then state how you know this fact. Who claimed the property on said plantations in Yazoo
510 County; in whose name were they carried on during said years?

X-int. 9. Did you know the firm of Partee & Bro's? and if so, who were its members; in what business were they engaged; what property did they own and where was it located? Were they engaged

in planting, and where? If either member of the firm died, by whom was the business carried on?

X-int. 6. Were you present at a sale made by S. M. Dyer, sheriff of Yazoo County, Mississippi, at Yazoo City, January, 1869, under a judgment of James Stuart's? If so, were either of you interested in having said lands to bring their market value? Were either of you judgment creditors of W. B. & Sarah D. Partee? Were there many persons present at said sale? Were there not other public sales of land made on that day? If you answer yea to last interrogatory-in-chief, then state whether said lands of Sarah D. Partee brought then their market value? Were lands then depreciated or depressed in value or not? What was the condition of said lands as to improvements? About what amount in all was in cultivation?

511

R. BOWMAN,
J. A. P. CAMPBELL,
For Defendants.

(Endorsed:) Filed June 22, 1874. Geo. T. Swan.

And afterwards, to wit, on the 16th day of November, 1874, the following depositions of Lamar Fontaine, N. T. Pugh, W. H. Cansy, C. H. McAlpine, Isaac Stallsworth, W. W. Wildy, and R. A. Barkly were filed in the clerk's office of said court, which, with the exhibits thereto, are in the words & figures following, to wit:

(Endorsed:) Filed Nov. 16th, 1874. Geo. T. Swan.

185.

In the circuit court of the United States for the southern district of Mississippi.

Depositions of Lamar Fontaine, N. T. Pugh, W. Cansy, C. H. McAlpine, Isaac Stallsworth, W. W. Wildy, and R. A. Barkley, witnesses for the complainants.

THE CANAL BANK OF LOUISIANA AND OTHERS, complainants, *vs.* WILLIAM B. PARTEE AND OTHERS, DEFENDants. } N. 185.

512 I, R. B. Mayer, a commissioner appointed under the laws of the United States to take affidavits and acknowledgments of bail, &c., certify that pursuant to a commission to me directed, issued from said circuit 22d day of June, 1874, & herewith returned, I proceeded at my office, between the hours of nine o'clock a. m. and sunset, the sixth day of July, in the year of our Lord one thousand eight hundred & seventy-four, to administer to said witnesses on oath that the answers they should make to the interrogatories put up by the parties to said cause respectively should be the truth, the whole truth, & nothing but the truth, and carefully & impartially examined said witnesses on the accompanying interrogatories & cross-interrogatories. N. T. PUGH, a witness of lawful age, having been by me duly sworn as aforesaid, deposes as follows:

To 1st int. My residence is Yazoo City, and I am deputy of the chancery clerk of Yazoo County, and have been ever since Oct. 1870. The

bonds of the public officers of Yazoo County are in the custody of the chancery clerk, whose legal deputy I am; also, the records &
513 archives of the old probate court of Yazoo County.

2. To the 2 int. I have carefully examined the records in the chancery clerk's office, and find that S. M. Dyer, as sheriff of Yazoo County, gave the issued bond as tax-collector of the county, but gave no bond for the collection of the levee tax. I find among the papers in the office a bond for the collection of taxes levied under the act of Feb'y 13, 1867, for levee purposes, but the bond was not approved, filed, or recorded. I send herewith a copy as a part of my deposition, marked "Exhibit A."

3. To 3 int. I have examined carefully the papers in the office of the chancery clerk and find a number of deputations appointing deputies, made by S. M. Dyer, sheriff, and I send herewith a copy of all of them, marked "Exhibit B." There are recorded in the office two sheriff's bonds & two tax-collector's bonds, executed by S. M. Dyer, & there is among the papers, but unfiled and not recorded, a bond for the collection of the levee tax alluded to above. These are all the bonds which I find. The deputations marked E, Exhibit B, are all that I find, but I do not know whether S. M. Dyer ever filed others.

514 4. To int. 4. I know nothing further that which would be of advantage to either party.

X 1. To cross-int. 1. There is on the minutes of the chancery court, May term, 1868, a decree of the kind alluded to, and of which I send a certified copy herewith, marked "Exhibit C."

To 2 X-int. I find nothing of record in the chancery clerk's office which indicates that said decree was satisfied in January, 1869.

And further this deponent says not.

W. T. PUGH.

And ISAAC STALLSWORTH, a witness of lawful age, having been duly sworn, deposes as follows:

1. To first int. In the years 1867, 1868, 1869, & 1870 I lived on the No Mistake plantation with William B. Partee. The first two years I worked as a carpenter; the other three years I farmed.

2. To second int. I am acquainted with William B. Partee, & his wife, & his son. During the years named they resided on the
515 Lake Dick plantation, in Yazoo County. They follow'd farming and running a saw-mill, and they run a store all at the same.

3. To the 3d interrogatory. The store was worth, as I look at it, about ten thousand dollars. It went in the name of Partee & Brother, that is, James Partee & Willie. I do not know whether it belonged to the old folks or not. There were twenty-two mules on the place when I went there; and about the time M'r Partee, the old man, went west, and brought thirty more on the place. They milked about twelve milch cows, and about the time I got there they had about twenty-five Texas steers. They had, when I first went there, along in January, 1866, fifty head of killing-hogs, & twenty-five or thirty other hogs, little & big; there were eight head of sheep, and a dozen or more goats, two mares, two colts & two horses; the two horses were claimed by the two young men; the old folks claimed the other things, and they all went in their name. There was not much change in the property in 1867 & 1868; 1869 they bought more mules, 14 or 15, as well as I can recollect, from M'r McCutchin; the sheep were destroyed by wolves, and the goats went to nothing, pretty much; at the end of the five years there
516 was only about five of them left. In 1870 the store was a little bigger than it had been, but there was not much change as to the

other property; the mules were worth about a hundred dollars apiece, the cows about twelve dollars apiece, the steers about fifteen dollars apiece, the colts were worth about $25 dollars apiece, the mares about $75, and the horses about $90; they were not number one horses; the sheep & goats were worth about a dollar apiece.

4. To the fourth interrogatory. William B. Partee and his wife lived on the Luke Dick plantation, but he went every day to the store on the No Mistake place and superintended the run'ing of the "No Mistake"; his son, James Partee, attended to the Lake Dick place. I had nothing to do with the settlement with the hands or laborers; for my own work I always settled with the old man himself; James D. Partee had nothing to with settling with me.

5. To the fifth int. I am acquainted with the two plantations above named, and one they call the Tyrone plantation; that is, the "No Mistake," "Lake Dick," & "Tyrone." The rent of those three plantations would have been worth at least two dollars per acre; there were in all three, about a thousand acres of open land, more or less. I suppose it would have been worth the same in each of the years mentioned.

517 6. To the sixth interrogatory. I do not know what they owned on the "Luke Dick" plantation or the "Tyrone" plantation; on the "No Mistake" plantation they owned the horses, mules, and cattle mentioned before. They lived on the "Lake Dick" plantation all that time, excusing the high water in 1867, when they went up to "No Mistake" and lived there about three months; that was in 1867; they continued to live on the "Lake Dick" place in 1870; they followed merchandise and farming and run'ing a saw mill.

7. To the seventh interrogatory. James D. Partee is the son of William Partee and Sarah D. Partee; he just knocked about there, and helped to run all the plantations, but attended more particularly to the Lake Dick plantation, and the crops made on that place all went in his name; he resided with his father & mother on the Lake Dick place.

8. To the eighth interrogatory. I cannot say whether James D. Partee, during those years, had any property independent of his father & mother further than a saddle-horse. I never heard him claim any thing as being his except the horse. I do not know as to his credit;

518 the old man stood at the head of everything on the plantation; the sons issued the rations; the old man obtained the supplies, and did all the running about and did all the business.

To the ninth interrogatory. I suppose there was about 400 acres of cleared land on the No Mistake place, about 300 on the "Lake Dick" place, and over 200 or 250 on the Tyrone place; there had been more before the war, but had grown up in cotton-wood and briars; their value in 1867 would average $20.00 an acre; that is what I offered for a small tract the last year I stayed there, but M'r Partee would not take it. I think their value was about the same in 1867 & 1869.

10. To the tenth interrogatory. I know of nothing else to state.

X 1. To the first cross-interrogatory. I did not know anything about what property they owned, except what I heard them say, and what other people said. W'm B. Partee always claimed everything on the "No Mistake" plantation, and settled for everything as if it was his. I never heard M'r's Partee say whether any of the property was hers or not. The property which M'r Partee claimed was on the "No Mistake" place. I cannot say how they got the property.

X 2. To the second cross-interrogatory. M'r W. B. Partee

519 owned the property on the No Mistake plantation. A Yankee, named Col. Newman, put some mules, about twelve, on the Lake

Dick place, & cultivated it on shares with James D. Partee, in 1866, & left the mules on the place when he left in 1867. James D. Partee continued to ran the place from that time on, but I do not know who claimed the stock. Willie Partee attended to the Tyrone place in 1866, and till he died in 1868; his brother James attended to the place from that time. I do not know who owned the property on it.

X 3. To the third cross-int. I was present at the making of the contracts with the most of the laborers on all the places. M'r W'm B. Partee made all the contracts that I was present at. M'r Colhoun did the most of the writing for M'r Partee, made all the bargains. Jimmie Partee issued the rations on the Lake Dick place, and when any hand on that place wanted anything at the store they had to bring an order from him, and he stayed most of his time on that place & superintended it. The first two or three years they cultivated about 150 acres of the Lake Dick place. The last year or two they got down to about 125 acres.

520 4. X. To fourth cross-int. The only way I know anything about it is by their talk. They claimed everything & used everything. I do not know from whom or how they got them, only they got some mules from M'r McCutchin and some steers from some Texas drovers. I do not know whether anything was destroyed or carried away during the war, as I did not go there till after the war closed, nor what property they had at the close of the war. M'r Partee, the old man, went west early, and brought back 30 mules, which he said he had bought at S't Louis.

X 5. To fifth cross-int. I do not know that James D. Partee received money from D'r Bonny, but have heard D'r Bonny's son, James Bonny, speak of such a thing.

X 6. To sixth cross-int. I was employed as a carpenter two years on the "No Mistake" and "Lake Dick" plantations, sometimes working on the one and sometimes on the other place. I did all the set'ling for my wages with the old man Partee. I never did have a settlement with any of the young ones. Three years I was farming on the "No Mistake" plantation I contracted with the old man and nobody else.

521 X 8. To the eighth cross-int. I do not know what property James D. Partee owned. I never heard him take any big authority over anything, except it was his saddle horse. The cotton shipped from all the plantations was marked Partee & Brother, but I never heard the young ones claim anything on the place as theirs individually, only in the horse line.

X 9. To the 9 cross-int. I knew the firm of Partee & Bro. The members were James D. Partee & his brother William. They sold goods at the store before William died. He stayed at the store altogether, and did the store business. When he died, in 1868, a clerk was employed at the store. The old man never went off to buy the goods, but they came always marked Partee & Brother. One owned the crop on "Tyrone," the other owned the crop on "Lake Dick." The store was located at the gin on "No Mistake." They did the management on "Lake Dick" & "Tyrone" places. When Willie Partee died, the business went on in the name of James D. Partee, and M'r William Hays was employed as a clerk & salesman in the store.

X 10. To the tenth cross-int. I was not present at the sale nor interested in it. I do not know whether the lands brought their market value.

& further this deponent says not.

his
ISAAC × STALLSWORTH.
mark.

522 And LAMAR FONTAINE, a witness of lawful age, having been first by me duly sworn, deposes as follows:

To the first interrogatory. I am a resident of Yazoo County and State of Mississippi; am a surveyor & civil engineer, &, including my practice at school and in the army, have been for twenty-two years.

To the second int. I examined the map, & find that it shows all of the lands correctly in said township & range mentioned on it, & gives a correct description of said land. The map was made by myself. It was not made from actual survey, but from the field-notes & records. I cannot say whether the amount of cleared land is absolutely correct at the present time or not, but do say that it was correctly marked on the annexed map, and the figures truly copied from those of a previous surveyor, and that the figures designating the amount of cleared land are a true copy of his, and that I believe them to be correct.

523 To the third int. I am acquainted with the plantations designated on said map. I supposed they belonged to William B. Partee & his wife in the years 1866, 1867, & 1868. The value of each, and the aggregate of the whole in April, 1867, I cannot tell, as I was not acquainted with the lands at that time. Was absent from the State of Mississippi, and did not become acquainted with the lands until the fall or winter of 1868. In January, 1869, I considered the Lake Dick plantation worth fully $30,000.00; and I considered the Seven Gums plantation worth $30,000.00; and I considered the Tyrone plantation worth $22,000.00; and I considered No Mistake plantation worth fully $50,000.00; and the aggregate value of the whole $132,000.00; and I consider the present value of Lake Dick plantation to be fully $20,000.00, and Seven Gums to be fully $18,000.00, and Tyrone to be fully $17,000.00, and No Mistake to be fully $40,000.00, and the present aggregate value of the whole to be fully $95,000.00.

524 To the fourth int. I cannot say as to what would be a fair rental value of said plantations for the years 1866 & 1867, as during those years I was absent from the State; as to the years 1868, 1869, 1870, 1871, 1872, 1873, & 1874, I say eight (8) dollars per acre, making a total aggregate valuation of the places collectively of $16,000.00 per annum for the years 1868, 1869, 1870, 1871, 1872, 1873, & 1874.

To int. 5. I state the plantations are constantly depreciating in value from imperfect cultivation, and the number of acres of cleared land is fast decreasing on account of the constant encroachment of the undergrowth.

To cross-int. 1st. I can only answer that I was not in the State in the fall of 1866, and cannot compare the relative value of lands in this year with those of the year 1869. Cannot state from my personal knowledge what the depreciation was.

To cross-int 2. I was absent from the State during those years, 1866 & 1867, and can only speak or answer so far as my individual family and relatives, who are planting in Yazoo County, are concerned,

525 and I say that they did suffer, as a general rule, very heavy losses by their planting operations. There was no profit made by them except in very rare instances. And further this deponent sayeth not.

LAMAR FONTAINE.

And C. H. MCALPINE, having been by me duly sworn as aforesaid deposes as follows:

1. To int. 1. In 1866 & 1867 I resided in Big Black, or near Big Black, in Yazoo County, and was farming. In 1868 I resided in Satartia, and

was clerking in a store. In 1869, I still lived in Satartia the first part of the year. I was an insurance agent the latter part of 1869, & in 1870 I was merchandising in Satartia.

2. To int. 2. I was acquainted with William B. & James D. Partee, but not with Sarah D. Partee. They resided on the "Lake Dick" plantation, in Yazoo County, and were engaged in merchandising & farming.

3. To third int. I know nothing of this general subject.

4. To int. 4. The family of William B. Partee, I think, lived
526 on the place in those years. I do not know who cultivated it. I never went on the place to settle with laborers during those years.

5. To int. 5. The places are called "Lake Dick," "Tyrone," & "No Mistake." I have been on "No Mistake," but never on either of the others. I am not sufficiently acquainted with either place to intimate the value of the rental.

6. To int. 6. I can state nothing as to their property. They lived on the "Lake Dick" plantation during the years named.

7. To int. 7. He is their son. I think he was farming on one of the places named before, but I do not know which. He resided on "Lake Dick" place with his parents.

8. To int. 8. I know nothing of his property nor his individual credit. I can state nothing as to the control of the property or the supplies.

9. To int. 9. I cannot state the quality or value of the cleared land.

To int. 10. I don't know anything which would benifit either party.

On cross-examination he deposes:

To cross-int. I know nothing as to the property of any of the Partees.

527 2. Cross-int. I do not know who cultivated the places or claimed the property.

To cross-int. 3. I know nothing of the contracts with the laborers, or other matters mentioned in the cross-int.

X 4. To cross-int 4. I know nothing as to their property.

X 5. To cross-int 5. I have heard all about this matter, but have no knowledge except hearsay.

X 6. To cross-int. 6. I had no dealings with the proprietors of the places, but only with the renters.

X 8. To cross-int. the seventh, numbered 8. I know nothing as to the property or credit of James D. Partee.

X 9. To int. 9. I had no business with the firm, but know that it existed. I do not know whether it consisted of two or three of the Partees. They were farming & merchandising, as I learned from general rumor, but can state nothing of my own knowledge as to their planting operations or their possessions. W'm Partee died, but I did not know who then conducted the business.

X 10. To cross-int. 10. I was not present at said nor inter-
528 ested in it. I know nothing as to the market value of the lands in question or the improvements on them. Lands were depreciated in 1869.

And further this deponent sayeth not.

C. H. McALPINE.

And WILLIAM H. CANSY, having been by me first duly sworn as aforesaid, deposes as follows:

1. To int. 1. In 1868 I was a clerk at Satartia; in 1867, a clerk at Machanicsburg; in 1868 I was a clerk at Wallace's Cross-Roads, about 14 miles from Satartia; in 1869 & 1870 a clerk in Satartia.

2. To int. 2. I became acquainted with the persons named in 1869. They resided at Lake Dick, and were farming & merchandising.

3. To int. 3. I do not know what property they owned in those years.

4. To int. 4. W. B. Partee & family lived on the Lake Dick place. In the fall of 1869 or in 1870, I went on the No Mistake & Lake Dick places to settle with hands for the firm of Wild, Richardson & Co., with whom I then lived. I always settled with W. B. Partee himself—he settling for the hands—except once; he was then absent. When I first went to settle, James D. said that he could not settle with us, that his father
529 was absent. When I went the second time William B. Partee had not returned, and James D. Partee then settled.

5. To int. 5. I am acquainted with the plantations, my business acquaintance dating from the fall of 1869. Their names were "Lake Dick," "Tyrone," "No Mistake." Not being a farmer, and not knowing what tillable land was on the places, I cannot state the value of the rental.

6. To int. 6. I do not know what amount of property they had in those years. They were living at Lake Dick and farming & merchandising.

7. To int. 7. He is their son. I do not know what he followed. He lived at the Lake Dick plantation, but whether he had a regular vocation or not I did not know.

8. To int. 8. I do not know whether James D. Partee had any separate property or individual credit. W. B. Partee superintended the farming operations. I do not know who ostensibly controlled and claimed the crops.

9. To int. 9. I do not know the quality or value of the cleared land.

10. To int. 10. I do not know anything which I suppose would
530 be any benefit or advantage to either.

On cross-examination he deposes:

X 1. To cross-int. 1. I do not know anything about their property.

X 2. To cross-int. 2. I do not know.

X 3. To cross-int. 3. I was not present at the contract with the laborers, and do not know on whose account the plantation was carried on, nor how many acres were in cultivation.

X 4. To cross-int. 4. I do not know what property they owned or how it was acquired. I do not know anything about the loss or destruction or purchase of the property.

X 5. To cross-int. 5. I know nothing of this except from rumor.

X 6. To cross int. 6. I had no business with them, but represented the business of Wild, Richardson & Co.'. I settled with Mr. Partee for the hands, except one time; then he was absent.

X 8. To cross-int. seventh, marked 8. I do not know as to the property or credit of the parties.

X 9. To cross-int. 9. I do not know anything about the firm. Wm. D. Partee died. I do not know who afterwards controlled the business.

531 X 10. To cross-int. 10. I was not present at the sale. Was not a judgment creditor of W. B. & Sarah D. Partee; had no interest in the sale, and know nothing about it. I do not know whether the lands brought their value, nor what was their condition as to improvement, nor whether lands were depreciated.

And further this deponent sayeth not.

WM. H. CANSY.

Exhibit C to N. T. Pugh's deposition.

EDWARD DUNNING, ADM'R, &C., OF CHRISTOPHER TODD, dec'd, *vs.* WILLIAM B. PARTEE & SARAH D. PARTEE. } Ch'y 146.

This cause having been brought on this day to be heard upon the bill of complainant filed therein, taken as confessed by the said defendants, William B. Partee & Sarah D. Partee, and the exhibits to said bill, and upon the report of George A. Gibbs, heretofore appointed by this
532 court to take and state the account of the amount due to said complainants interested in his lifetime under the last will & testament of James Dick, deceased, mentioned & set forth in said bill of complaint, and on reading & filing said report, from which it appears that there was due to complainants interested in his lifetime, and at the time of his death, the sum of seven thousand six hundred & eighty $^{00}_{4}$ dollars, and said report being found in all things correct the court doth order, adjudge, and decree that said report and all things contained therein be, and the same is hereby, ratified and confirmed; and the court now being fully advised in the premises doth order, adjudge, & decree the aforesaid sum of seven thousand six hundred and eighty $^{00}_{4}$ dollars, so found due to said complainants interested in his lifetime, is under and by the provisions of the last will & testament of James Dick, deceased, mentioned in said bill, a complainant, a lien and charge upon all the lands of said defendants devised to said Sarah B. Partee
533 under & by said will & testament of *of* said James Dick, deceased, known as the "No Mistake" plantation, near the town of Satartia, in the county of Yazoo, and State of Mississippi; and the court doth further order, adjudge, & decree that the aforesaid lands, known and designated as the "No Mistake," is and doth stand charged with the payment of the aforesaid sum of seven thousand six hundred & eighty $^{00}_{4}$ dollars against all liens & incumberances created therein by said defendants since the death of said James Dick, deceased, on the day of , 1849, and against all other judgments & decrees rendered against said defendants; and the court doth further order, adjudge, & decree that said defendants pay to said complainants the aforesaid sum of seven thousand six hundred & eighty $^{00}_{4}$ dollars, so found due, within thirty days from the date of this decree, and in default thereof that the aforesaid lands, known and described as the "No Mistake" plantation, or so much thereof as may be sufficient, to be sold for the payment
534 of the aforesaid sum of seven thousand six hundred and eighty $^{00}_{4}$ dollars, due to said complainants, and that said lands be sold for cash at public auction, upon giving the notice & the time and place of sale, as required by law. It is further ordered, adjudged and decreed that the sheriff of Yazoo County be appointed a commissioner to execute this decree in the sale of said lands, and that he execute a deed therefor to the purchaser on the said sale, and that from the proceeds arising from the sale of said lands said commissioner shall pay the costs of said sale, and then pay to said complainants of his solicitors the aforesaid sum of seven thousand six hundred and eighty $^{00}_{4}$ dollars, together with legal interest thereon; and that the said commissioner report all the proceedings as such to the next term of this court. It is further ordered, adjudged, and decreed that said defendants pay the costs of this suit.

June 8th, 1868.

J. A. P. CAMPBELL,
Chancellor.

THE STATE OF MISSISSIPPI,
Yazoo County:

535 I, J. M. Dickson, clerk of the chancery court of said county, do hereby certify foregoing four pages, and the upper portion of this page, contain a true & correct copy & transcript of the decree of the chancery court of said county, in a certain cause therein, wherein Edward Drenning, administrator of Christopher Todd, deceased, was complainant, & W'm B. Partee and Sarah D. Partee were defendants, rendered on the 8th day of June, 1868, as fully and completely as the same appears and remains of record in my office, in Minute Book No. 2, on pages 38 & 39 of the minutes & proceedings of said court. Given under my hand & seal of office this 14th day of June, A. D. 1874.

[SEAL.] J. M. DICKSON, *Clerk*,
By N. T. PUGH, *D. C.*

Exhibit A to deposition of N. T. Pugh.

Bond of S. M. Dyer.

Know all men by these presents that we, S. M. Dyer, W. G.
536 Gauberry, H. B. Kidd, Cha's C. Dyer, F. Barksdale, are held and firmly bound unto the State of Mississippi in the sum of twenty thousand dollars, for the payment of which sum, well & truly to be made, we bind ourselves, our heirs, executors, administrators & assigns jointly and severally firmly by these presents, signed with our names and sealed with our seals and date this 30th day of Dec., A. D. 1867.

The condition of the above bond is such that whereas, the above bound S. M. Dyer, by an act of the legislature of the State of Mississippi, approved Feb'y 13th, 1867, became collector of taxes levied by said act for levee purposes in and for the county of Yazoo:

Now, if the above bo'nd S. M. Dyer shall well & truly pay all monies that may come into his hands by virtue of his said office to the person or persons duly authorized to receive the same, and shall faithfully do & perform all the duties required of him as such collector during his term of office, then the above bond is to be void, otherwise to remain in full force & virtue.

537 S. M. DYER.
W. G. GAUBERRY. [SEAL.]
H. B. KIDD.
CHA'S C. DYER.
F. BARKSDALE.

Exhibit B to N. T. Pugh's deposition.

Deposition.

THE STATE OF MISSISSIPPI,
Yazoo County:

I hereby constituted and appointed Beverly R. Grayson, my true & lawful deputy, for me & in my name to act as deputy sheriff, with full powers to do & perform all the several acts and duties enjoined upon me as sheriff as fully as I am by law empowered to do.

Given under my hand this 31st day of Oct., A. D. 1866.

S. M. DYER, *Sheriff.*

THE STATE OF MISSISSIPPI,
Yazoo County:

I hereby constitute and appoint Joseph R. Dukes my true and
538 lawful deputy, for me and in my name to act as deputy sheriff, with full powers to do and perform all the several acts and duties enjoined upon me as sheriff as fully as I am by law empowered to do.
Given under my hand this the thirty-first day of October, 1866.
S. M. DYER, *Sheriff.*

THE STATE OF MISSISSIPPI,
Yazoo County:

I hereby appoint and constitute Paul Barham my true and lawful deputy, with full powers and authority to do and perform all the several acts and duties enjoined upon me.
Given under my hand this the 13th day of November, A. D. 1867.
S. M. DYER, *Sheriff.*

I hereby constitute and appoint J. J. B. White, j'r, my lawful deputy to execute according to law all business intrusted to him connected with my office.
539 Given under my hand this 12th day of Sept., 1868.
S. M. DYER, *Sheriff.*

I hereby constitute and appoint Leroy N. Roberts my lawful deputy, to execute and perform all legal duties connected with my office.
Given under my hand this 28th day of April, 1868.
S. M. DYER, *Sheriff.*

THE STATE OF MISSISSIPPI,
Yazoo County:

I hereby constitute and appoint Geo. G. Holin my lawful deputy, with full power to do and perform all the several acts and duties enjoined upon me.
Given under my hand this the 16th day of November, A. D. 1867.
S. M. DYER, *Sheriff.*

THE STATE OF MISSISSIPPI,
Yazoo County:

540 I hereby constitute and appoint John Hudson my true and lawful deputy for the Silver Creek precinct, with full power and authority to do and perform all the several acts and duties enjoined upon me.
Given under my hand this 8th day of October, 1867.
S. M. DYER, *Sheriff.*

STATE OF MISSISSIPPI,
Yazoo County:

I hereby constitute & appoint Ira T. Cobb my true and lawful deputy for the Cobb Store prescin't, with full power and authority to do and perform all the several acts and duties enjoined upon me.
Given under my hand this 22nd day Oct., A. D. 1867.
S. M. DYER, *Sheriff.*

541 I also certify that the witnesses R. A. Barclay & W. W. Wildy were not found. The said Barclay, as I am informed, resides in Warren County, Mississippi, and the said Wildy being now in San

Diago, California. The said N. T. Pugh claims the usual fee for one day's attendance, and three dollars and fifty cents for transcribing the exhibits to his deposition. The said Lamar Fontaine, one day's attendance. The said W. H. Cansy, C. H. McAlpine, and Isaac Stallsworth, each one day's attendance, and for traveling forty miles each in coming and returning home. I also certify that the deposition of Lamar Fontaine was wholly written by himself, and that the deposition of the other witnesses were written down by me as early as practicable in the language of the witnesses respectively, and in their presence, and were then completed, read over to them by me, and by them subscribed in my presence, and remained in my custody unaltered until by me sealed up this the 18th day of July, A. D. 1874, addressed to George G.
542 Swan, clerk of the said circuit court of the United States, for the southern district of Mississippi, and deposited in the office at Yazoo City.

Given under my hand and official seal this 18th day of July, in the year of our Lord one thousand eight hundred & seventy-four.

R. B. MAYES,
U. S. Commissioner.

I also certify that on the 18th day of July, 1874, as I was going to the post-office to mail said depositions, I met A. M. Harlen, esq'r, who is of council for one of the parties aforesaid, and stated to him that I was about to deposit said depositions in the mail, but was requested by him to withhold the same and subpœna said R. A. Barclay, and that I have since then issued several subpœnas to said R. A. Barclay, some to Warren County and some to Yazoo County, some of which have been returned "not found" and others have not been returned at all. And now on the 13th day of November, 1874, I mail the depositions of the other witnesses as above certified.

Given under my hand and seal the 13th day of Nov., 1874.

R. A. MAYER,
U. S. Commissioner.

543 And afterwards, to wit, on the 3rd day of February, A. D. 1875, being a day in a special January term, A. D. 1875, of said court, a pro confesso was rendered against Sarah D. Partee, which is in the words and figures following, to wit:

In the circuit court of the United States for the southern district of Mississippi, special January term, A. D. 1875, February 3rd, A. D. 1875.

Before the honorable R. A. Hill, district judge, present and presiding.

CANAL BANK OF LOUISIANA & AL.
vs.
WM B. PARTEE ET AL. } N. S. 185. In equity.

Sarah D. Partee having entered her appearance herein and failed to plead, answer, or demur to the complainants' bill, it is therefore, on motion of complainants' solicitors, ordered, adjudged, and decreed that the several allegations of complainants' bill be taken for confessed as to the said Sarah D. Partee.

And afterwards, to wit, on the 10th day of February A. D. 1875, being a day in said special term aforesaid, of said court, a final decree was
544 rendered in said cause, which is in the words and figures following, to wit:

In the circuit court of the United States for the southern district of Mississippi. Special January term, A. D. 1875, February 10th, A. D. 1875.

Before the honorable R. A. Hill, district judge, present and presiding.

CANAL BANK ET AL.
vs.
WILLIAM B. PARTEE ET AL. } No. S. 185. In equity.

Be it remembered that this cause came on this day to be heard upon the bill, pro confesso, answers, exhibits and proofs, and the court being thereof sufficiently advised, and being satisfied that the complainants are not entitled to the relief sought, doth order, adjudge, and decree that the complainants' bill be dismissed at their cost to be taxed, for which execution may issue.

And the complainants having in open court prayed an appeal from this decree to the Supreme Court of the United States, it is further ordered, adjudged, and decreed that the same be and is hereby granted upon their entering into bond in the penalty of five hundred dollars with security to be approved by the clerk of this court, and con-
545 ditioned according to law.

Ordered, adjudged, and decreed this 10th day of February, A. D. 1875.

R. A. HILL, *Judge*.

And afterwards, to wit, on the 24th day of December, A. D. 1875, an appeal bond was filed in the clerk's office of said court, which with the endorsement thereon is in the words and figures following, to wit:

Know all men by these presents that we, The Canal Bank, The Crescent City Bank, The Union Bank, The Louisiana State Bank, I. Marsh Denman and A. Bedault as principals, and William L. Nugent and Thomas A. McWillie as securities, are held and firmly bound unto William B. Partee,, Sarah D. Partee, James D. Partee, Robert Bowman, Thomas A. Nelson, James Stewart, and Fountain Barksdale, in the penal sum of five hundred dollars, to the payment of which well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated this 21st day of December, A. D. 1875.

The condition of this obligation is such, that whereas the above
546 bound principals in this bond have prayed and obtained an appeal from the final decree of the circuit court of the United States for the southern district of Mississippi, in equity, rendered on the 10th day of February, A. D. 1875, in a certain cause therein pending, wherein the said Canal Bank and others were complainants, and the said William B. Partee and others were defendants, number 185, whereby their bill was dismissed at their costs to be taxed, to the Supreme Court of the United States.

Now, therefore, if the said Canal Bank, Crescent City Bank, Union Bank, Louisiana State Bank, I. Marsh Denman, and A. Bedault, shall prosecute their said appeal to effect and answer all costs and damages,

if they shall fail to make good their plea, then this obligation shall be void and of no effect, otherwise to remain in full force and virtue.

CANAL BANK, [SEAL.]
By W. L. NUGENT, *Att'y.*
CRESCENT CITY BANK, [SEAL.]
By W. L. NUGENT, *Att'y.*
UNION BANK, [SEAL.]
By W. L. NUGENT, *Att'y.*
LOUISIANA STATE BANK, [SEAL.]
By W. L. NUGENT, *Att'y.*
I. MARSH DENMAN. [SEAL.]
A. BEDAULT, [SEAL.]
By att'y, W. L. NUGENT.
547 W'M L. NUGENT. [SEAL.]
THOS. A. McWILLIE. [SEAL.]

Sealed and delivered in presence of and approved by me this 24th December, 1875.

GEO. T. SWANN, *Clerk.*

(Endorsed:) Filed and approved by clerk this 24th Dec'r, 1875. Geo. T. Swann, clerk.

SOUTHERN DISTRICT OF MISSISSIPPI, *ss:*

I, George T. Swann, clerk of the circuit court of the United States for said district, hereby certify that the foregoing and annexed five hundred and forty-six (546) pages contain a full, true, and complete transcript of the record of the final decree of said court in the cause therein stated between two parties named therein, and of the order for appeal therein, together with a true copy of the appeal bond filed in said cause, as the same remains of record in said court.

In testimony whereof I have hereunto set my hand and affixed [SEAL.] the seal of said circuit court, at Jackson, in said district, this 10th day of May, A. D. 1876.

GEO. T. SWANN, *Clerk.*

May 10, 1876, rec'd of appellants $137.85, cl'k's fees for transcript.

GEO. T. SWANN, *Cl'k.*

548 In the circuit court of the United States for the southern district of Mississippi. In equity.

CANAL BANK ET ALS., APPELLANTS,
vs.
W'M B. PARTEE, JAMES D. PARTEE, ROBERT Bowman, James Stewart, Fountain Barksdale, trustee, & Thomas A. Nelson & others, appellees. } N. S. 185

To W'm B. Partee, James D. Partee, Robert Bowman, Thomas A. Nelson, James Stewart, Fountain Barksdale, trustee, & others, or their att'y of record, J. A. P. Campbell, esq.:

Whereas the Canal Bank of New Orleans, L'a, and others, complainants in the above-entitled cause, have lately appealed to the Supreme Court of the United States from a decree lately made in the circuit court of the United States for the southern district of Mississippi, in

equity, made in favor of you, the said W'm B. Partee, James D. Partee, Robert Bowman, James Stewart, Fountain Barksdale, trustee, Thomas A. Nelson, and Nelson, Lamphier & Co., and has filed the security required by law, you are therefore cited to appear before the said Supreme Court at the city of Washington on the third Monday of October, A. D. 1876, next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand at the city of Oxford, in the northern district of Mississippi, in the 5th circuit, the 17 day of April, in the year of our Lord one thousand eight hundred and seventy-six.

R. A. HILL,

District Judge of the United States for the Southern District of Mississippi, and Presid'g Judge of the Circuit Court of the United States for s'd Southern District.

UNITED STATES OF AMERICA,
So. Dis. Miss.:

Personally appeared before me, clerk of the circuit court of the United States for s'd southern district of Mississippi, W. L. Nugent, solicitor for the appellants, who, being duly sworn, says that on this the 24th day of April, A. D. 1876, he delivered a true copy of the foregoing citation in appeal to J. A. P. Campbell, esq., solicitor for the appellees therein named, and executed the same personally upon him.

W. L. NUGENT, *Sol.*

Sworn to and subscribed before me this 24th April, A. D. 1876.

GEO. T. SWANN, *Clk.*

549 (Indorsed:) N. 185 S. Circuit court U. S. s. dis. Miss. Canal Bank & others. W'm B. Partee & others. Citation on appeal. Nugent.

(Indorsement on cover:) No. 122. The Canal Bank of New Orleans, the Crescent City Bank, the Union Bank, the Louisiana State Bank, J. Marsh Denman, & A. Bedault, appellants, vs. William B. Partee, Sarah D. Partee, James D. Partee, Robert Bowman, Tho's A. Nelson, James Stewart, and Fountain Barksdale, trustee for Nelson, Lamphier & Co. S. Mississippi C. C. U. S. Filed 5th June, 1876.

Supreme Court of the United States,

OCTOBER TERM, 1878.

CANAL BANK, Et Als.,

vs.

W. B. PARTEE, Et Als.

Appeal from Circuit Court, Southern District Mississippi.

BRIEF OF WILLIAM L. NUGENT FOR APPELLANTS.

CLARION PRINT

Supreme Court of the United States,

OCTOBER TERM, 1878.

CANAL BANK, ET ALS.,

vs.

W. B. PARTEE, ET ALS.

Appeal from Circuit Court, Southern District Mississippi.

BRIEF OF WILLIAM L. NUGENT FOR APPELLANTS.

I propose noticing the more important points involved in the cause briefly, leaving to my associate the elaboration of the issues involved, in such manner as he may desire. The leading facts may be stated thus: In July, 1866, Sarah D. Partee, being indebted, as the bill alleges, on contracts made anterior to the late war, which were valid, legal and binding, to the extent of $125,000, exclusive of interest, submitted a written proposition for settlement, afterwards slightly modified, to place all her creditors on the same footing and equitably discharge their claims. The terms of the proposition were, to secure one-half the principal

by a mortgage of her Mississippi plantations, and pay the other half in wild lands at $10 per acre. The mortgage notes were to be payable in January, 1868, 1869, 1870, 1871 and 1872, and bear eight per cent. interest from November 1, 1866; and to give certainty to the arrangement, as well as to secure confidence, Judge Bowman was to undertake the proper execution of the trust deed. Messrs. Hyams & Jonas were to carry out the arrangement with Judge Bowman, in view of the fact that they already had sundry claims against Mrs. Partee. The written agreement to this proposition was instantly signed in pencil by Hyams & Jonas for the Canal Bank, Union Bank and Crescent City Bank. Exhibits 3 and 4 to deposition of Hyams.

On the 19th November, 1866, the trust deed was duly executed, stamped and recorded. After its registration, the deed, and the new notes representing fifty per cent. of the debt, were delivered to Hyams & Jonas for the purpose of consummating the original agreement. These new notes remained in the hands of Hyams & Jonas, and were in part distributed to those creditors who acceded to the proposition. On the 21st of January, 1868, all new notes not given out were surrendered to Mrs. Partee, as shown by exhibit 10 to Hyams' deposition. The assenting creditors were J. M. Denman & Co., $9000; Crescent City Bank, $4000; Conner & Son, $9000; E. Dupasseur & Son, $7200; Canal Bank, $10,000; Union Bank, $4415; McStea, Value & Co., $1200; Slark, Stauffer & Co., $1000. These papers were left in the custody of Hyams & Jonas with instructions to secure acceptance, without reference to time, until the new notes not accepted were returned; for all new notes accepted by creditors the old notes were given up.

The trust deed recites on its face that a large number of Mrs. Partee's creditors had signified their consent to release and discharge her upon the execution of the security, and we have seen that those represented by Hyams & Jonas had done so in fact before the deed was executed. It contains these two stipula-

tions, in the order in which they are given: "Provided, however, if any of said creditors shall refuse to accept of the terms of settlement before mentioned in this deed, and refuse to release, acquit and discharge the said Sarah D. Partee from her liability on the aforesaid first described claims, then such creditors * * shall not receive any part of the proceeds of sale of said lands, but the same shall be applied, etc." "It is further understood and expressly provided, that if any of the aforesaid creditors of said Sarah D. Partee shall fail, within ninety days of the date of this deed, to signify, in writing, their acceptance of the terms of settlement and payment of their claims or debts as herein provided, said creditor so failing to accept the aforesaid terms, will and shall be considered as refusing the same, and the said creditor or creditors shall be barred of benefit, right, advantage or privilege of the terms and provisions of this deed." On the 24th January, 1867, Miles Taylor, attorney, accepted for the Bank of Louisiana, as shown by his letter, exhibit 6 to Hyams' deposition. The papers were not in shape for acceptance until some time after the deed was executed, as shown by Mr. Hyams, and it does appear that those who did accept and receive the new notes were not slow or at all derelict. Mr. Hyams, who was charged by Mrs. Partee with the duty of securing the acceptance by creditors, made no exaction as to the mode in which the acceptance should be signified.

On the 28th of April, 1866, James Stewart, a creditor of Sarah D. Partee, brought, in the Circuit Court of Yazoo county, a suit against her and William B. Partee, her husband, on a note in the following form:

$5,397.87. NEW ORLEANS, December 18, 1861.

Twelve months after date I promise to pay to the order of Rotchford, Brown & Co., at their counting house in this city, fifty-three hundred and ninety-seven dollars and eighty-seven cents, value received, with eight per cent. per annum interest after maturity until paid.

SARAH D. PARTEE.

Authorized by me.

W. B. PARTEE.

Process issued and was executed May 10, 1866, "by delivering a copy of the within to the within named parties." On the 6th of June, judgment by default was rendered against Partee and wife and an informal release of errors, signed by both of them, filed among the papers. The plaintiff granted six months stay of execution.

On the 1st of January, 1867, execution issued and was levied April 9, 1868, on the lands included in the trust deed. On the 7th of December, 1868, a writ of *venditioni exponas* issued, and on the 5th of January, 1869, the lands were sold; and, as the record shows, purchased in part by a son of Mrs. Partee, and in part, or in the main rather, by Stewart. The transcript in evidence shows that the suit against Sarah D. Partee and her husband was a plain action of assumpsit, in which the married woman was treated as a *feme sole*. The existence of this judgment was concealed from Messrs. Hyams & Jonas, and the property mortgaged was stated to be encumbered only with a small annuity. As this judgment and the proceedings under it, appeared to control the action of the court below, I propose to consider the question of its validity here before noticing the points arising upon the trust deed.

I.

Can the judgment be attacked in this proceeding and shown to be a nullity? Is it void? In Partee vs Silliman, 44 Miss., 283, the Supreme Court of Mississippi affirmed a judgment against Sarah D. Partee on one of her notes, because the testimony showed that the contract was such as a married woman owning separate property *could make in this State*, but in that case the declaration averred that the note sued on was given for supplies for her Mississippi plantations. In Bank of Louisiana vs. Williams, 46 Miss., 618, the same Court settled that the law of this State governed and controlled as to the remedy against a married woman; that she held property here as if the statutes were embodied in her deed; that

foreign creditors had no remedy against her personally, and that it made no difference where the particular debt was contracted. As to her property here and its liability, the laws of this State control. The point, however, does not properly arise in this case, and is referred to incidentally, because the mere fact of the debt's being contracted in Louisiana cuts no figure whatever in determining the question now presented. The release of errors so much relied on by counsel is worthless, the Supreme Court of Mississippi having decided that a *feme covert* cannot release errors. Fox vs. Davis, Miss. Op. Book B., 380.

It is an essential allegation in every action against a married woman that she has a separate property subject to the debt, and this must be made in the declaration, or in a replication to the plea of coverture. It is, also, necessary to allege and prove that the consideration of the contract sued on was such as is expressly authorized by statute. Every suit against her takes the shape and direction of reaching a particular fund. The enforcement of her contracts in Mississippi is in the nature of a proceeding *in rem*, and no general judgment can be rendered. She cannot execute a valid promissory note jointly with her husband, or separately, so as to impose any liability upon her or her estate. A judgment against a married woman is a nullity.

Choppin vs. Harmon, et al., 46 Miss., 304.
Pallen vs. James, 45 Miss., 129.
Mallet vs. Parham, 52 Miss., 921.
Nelson vs. Miller, 52 Miss., 410.
Griffin vs. Ragan, 52 Miss., 72.
Bank of Louisiana vs. Williams, 46 Miss., 618.

The case of Cary vs. Dixon, 51 Miss., 593, is on all-fours with this, and the title derived at execution sale under the judgment in that case was held to be a nullity. It is there said that if the Court awards judgment against a married woman in a case unauthorized by law, such judgment will be a nullity and must be treated as such by other Courts, for the reason that a *feme covert*

is incapable of being bound either by contract or judgment, except in the special cases authorized by law. A judgment against her is no more binding than her contract or other obligation unless it *affirmatively* appears in the record to be in the special case authorized by law. The courts of common law in Mississippi, as to married women, are courts of special limited jurisdiction. Coverture is distinctly charged in the bill to be one of the grounds of the invalidity of the Stewart judgment, and the fact is admitted. Nay, the note sued on affirmatively proves, or tends to prove, that its maker was a married woman at the time, else why the words "authorized by me" before the signature of W. B. Partee? As said by the Court in Cary vs. Dixon, *supra*, the contract is *prima facie* void and it is incumbent on him who asserts that it was made about a matter in which the statute authorized her to contract, to prove it. The acts of *femes covert* are, in general, absolutely null and void *ab initio*. Code 1857, p. 336, Article 26.

But if it did not appear that Sarah D. Partee was a married woman, can we show the fact so as to nullify the judgment? There is no question of innocent purchaser for value and without notice to perplex us. The judgment creditor and the son of Sarah D. Partee were the purchasers of the property for a tithe of its value. The presumption in favor of all judgments is only indulged so long as the absence of jurisdiction is not affirmatively shown. The want of jurisdiction in the Court to render the judgment is always matter of proof and defense, and where it is shown, there is no room for presumptions.

Campbell vs. Brown, 6 How. (Miss.,) 106.
McComb vs. Elliott, 8 S. and M., 505.
Hemphill vs. Hemphill, 34 Miss., 68.
Holman vs. Steadman, 33 Miss., 550.
Freeman on Judgments, §§ 565, 576.

The recital in a decree, that due legal notice has been given to all the defendants is only *prima facie* evidence of the fact, and

it is only where the jurisdiction of the Court is established that the subsequent proceedings cannot be collaterally attacked. Secrist vs. Green, 3 Wall., 751.

The subject matter of the suit must be within the jurisdiction of the Court to give conclusiveness to its decree; if it does not have jurisdiction, the judgment or decree is a nullity, and the question of jurisdiction can be enquired into. Hickey vs. Stewart, 3 How., 762, 763, and cases cited; Comstock vs. Crawford, 3 Wall. 396. If the record states the facts conferring jurisdiction, the statement is merely *prima facie* evidence of such facts, and evidence may be given to establish a fact which, if stated in the record, would exclude the jurisdiction of the Court. The doctrine contended for, that a judgment must stand until reversed for error, or set aside for fraud, does not apply where the want of jurisdiction is made a question. This may always be set up when a judgment is sought to be enforced, or any benefit is claimed under it, and is not inconsistent with the principle which ordinarily forbids the impeachment or contradiction of a record.

Fitzhugh vs. Custer, 4 Tex., 391.
Horan vs. Wahrenberger, 9 Tex., 313.
Noyes vs. Butler, 6 Barb., 613.
Shumway vs. Stillman, 6 Wend., 447.
Buell vs. Trustees Lockport, 8 N. Y., 55.
Slaughter vs. Cunningham, 24 Ala., 260.
Kelly vs. Hooper's Exrs., 3 Yerg., 394.
Holt vs. Alloway, 2 Blackf., 108.
Wesbter, vs. Reid, 11 How., 437.

II.

The judgment in favor of Stewart being void because Sarah D. Partee was, at the time the note was given and suit brought, etc., a *feme covert*, and this impediment to complainant's recovery being removed, is there any reason to deny relief, growing out of the trust deed and its peculiar stipulations? In other words, was

the presiding Judge of the Circuit Court right in saying that the complainants were not entitled to relief because they failed to accept the deed in writing within ninety days after its date? The peculiar stipulation or covenant in the deed was not included in the proposition made in July, 1866, but the terms of settlement were, and they were accepted in writing by Hyams & Jonas for the clients then represented by them, as was known to all parties interested. In fact the deed itself so recites. For aught that appears, all the complainants did accept the terms of settlement within the ninety days as matter of fact. They surrendered their old notes and took the new, and they are now endeavoring to enforce the deed.

Sadler & Jackson, *ex parte*, 15 Vesey, Jr
Spottwood vs. Stockdale, Cooper's Reports, 102.
Tennant vs. Storey, 1 Rich. Eq., 222.
Decaters vs. LeRay de Chaumont, 2 Paige, 490.
Ward vs. Lewis, 4 Pick, 578.
Galt vs. Debrill, 10 Yerger, 158.
Phœnix Bank vs. Sullivan, 9 Pick, 410.
Butler vs. Rhodes, 1 Esp., N. P. Rep., 236.
Lippincott vs. Baker, Binney, 13.

But to what creditors was this stipulation applicable? Some had accepted, to the knowledge of all the parties, the proposition of July having been signed in pencil by their attorney. Another, as we have seen, accepted in writing after the deed was executed. All took the new notes and surrendered the old. It was not known that all the creditors would accept. The deed was intended for all and actually provided for all; but by a subsequent stipulation excluded those who failed to accept. The after covenant that those who failed to accept in writing within ninety days, etc., was only intended as fixing the refusal in favor of the assenting creditors. They were to be considered as refusing, in the absence of other evidence, and because of the *refusal* were to be deprived of the benefit of the security. The deed was in favor

of all, but certain persons were to be cut off because of a failure, of course after notice, to accept the terms of the deed; thus defeating a conceded right by a condition in the shape of a penalty. It is quite evident, I think, that the creditors who had assented to the proposition of July, 1866, were not intended to be included in the stipulations above referred to, and that those who assented, *in fact*, within the time limited, or even afterwards, were not to be affected because of a failure to accept in writing.

The parties are, however, concluded by the action of their agents, Hyams & Jonas, who were charged with the consummation of the contract. They were specially appointed to secure the assent of creditors and the letters from W. B. Partee to them show that time was not regarded as essential. The rigor of the stipulation was thus waived by Sarah D. Partee. I know it has been held by very respectable courts, that the doctrine of estoppel *in pais*, or by conduct, has no application to married women; but the doctrine does not prevail in Mississippi.

Revised Code, 1857, p. 335, arts. 23, 24, 25.
Parmalee vs. McGinty, 52 Miss., 485.
Cord Rights Married Women, Secs. 246, 247, 248.
2 Story's Eq., Sec. 1536.

Sarah D. Partee and her husband accepted the old notes and permitted the creditors to repose upon their security until the statute of limitations had barred their right of action on the old notes, and never once notified them that the deed was revoked because of a failure to accept it in writing within ninety days. It would, therefore, seem that their acquiescence in what was done by their agents, Hyams & Jonas, would operate as a complete equitable estoppel.

III.

In no event, however, should the bill have been dismissed. It was alleged that the contracts, out of which the debt originated were valid, legal and binding upon the wife; there was a *pro confesso* against Mrs. Partee and W. B. Partee, by his answer,

admitted that the debts sued for were due by Sarah D. Partee. The creditors were before the court, the debtors were in court, and the property liable for the debts was within the jurisdiction of the court. Under the prayer for general relief the property should have been subjected to the payment of the debts by appropriate decree. If the pleadings were at all defective, the bill should have been remanded to rules for appropriate amendment. This course would have been pursued but for the ruling of the court which adjudged the sale under Stewart's judgment to be valid and that the complainants had not a shadow of right. Had the Court decided the judgment to be a nullity, as it was, doubtless this course would have been pursued. I respectfully insist, therefore, that if we are held to be deprived of the benefit of the trust deed, because of the failure to accept in writing, within ninety days after its execution, the decree of the Circuit Court be reversed and the cause remanded for further proceedings. See 44 Miss., 283.

WILLIAM L. NUGENT,
Of Counsel for Appellants.

Supreme Court United States.

OCTOBER TERM, 1878.

No. 122.

THE CANAL BANK AND OTHERS

vs.

WM. B. PARTEE AND OTHERS.

BRIEF ON THE PART OF THE APPELLANTS.

P. PHILLIPS,
WM. A. MAURY,
for Appellants.

R. O. Polkinhorn, Printer.

Supreme Court United States.

OCTOBER TERM, 1878.

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BRIEF ON THE PART OF THE APPELLANTS.

Statement.

At the close of the late civil war, Sarah D. Partee, then of Mississippi, who had theretofore been in affluent circumstances, found herself, although reduced in fortune, still the owner of a considerable landed property, but oppressed by debts amounting to $125,000, owing to various parties, for the most part in New Orleans.

These creditors becoming urgent, some of them having sued her, she, professedly to prevent any inequality of benefit which might grow out of a race of diligence among them, on the 19th of July, 1866, made a formal overture, in writing to them, through her attorneys in New Orleans, in which, after reciting

that the war had caused her a loss of $300,000, besides leaving her indebted as aforesaid, and that she had no resources except her lands, which would not then bring enough to pay one-half of her indebtment, she proposed to satisfy one-half of her debts by making over to her creditors certain uncultivated lands in Tallahatchie and Sunflower Counties at $10 an acre; and for the other half of her debts she offered each of her creditors her five notes of hand, for equal sums, payable respectively on the first days of January, in the years 1867, '68, '69, '70, '71, with interest at 8 *per cent.*, secured by a deed of trust on the residue of her lands situate in Yazoo County (p. 37). This proposition was afterwards so far modified as to postpone by one year the maturity of each of the said notes.

As is recited in the deed of trust, next to be mentioned, and otherwise well established, "*a large number*" of her creditors, among whom were the complainants, accepted the proposition above mentioned. Accordingly, and pursuant to that proposition, she and her husband, Wm. B. Partee, on the 19th of November, 1866, united in a deed, containing certain recitals, and conveying the said lands and certain personal property to one Robert Bowman, in trust to hold the wild lands for the benefit of such creditors as should accept the proposed terms of settlement, and the same to sell if a majority of such creditors should desire it, or to convey to each of such creditors his proportion of said lands, and providing that if any creditors should fail to come in under the deed, their shares of the said lands should be applied for

the benefit of the other creditors; and as to the other lands and personalty, the deed provided that the trustee should sell them, or so much thereof as might be necessary, in case of default touching the notes given under the deed.

The deed contained a clause to this effect, that "if any of the aforesaid creditors" should fail within ninety days from the date of the deed "to signify in writing their acceptance of the terms of settlement," such failure should be construed to be a refusal, and debar such creditor or creditors from any benefits under the deed. (pp. 30–34.)

Before the execution of the deed, to wit, on the 6th of June, 1866, the Circuit Court of Yazoo County rendered a judgment against Sarah D. Partee and William B. Partee, at the suit of one James Stewart, for $6,984.86 and costs.

On the 9th of April, 1867, the lands in Yazoo County were levied on by virtue of a *fieri facias* issued under said judgment, and on the 5th of January, 1869, the said lands were sold, under a *verditioni exponas*, to James Stewart, the judgment creditor, and James D. Partee, a son of the judgment debtors. The proceeds of this sale fell short of the amount due on the judgment, which still remains in part unsatisfied.

In this state of things the bill was filed to enforce the deed of trust, *non obstante* the judgment and the proceedings thereunder.

Bill.

The bill (pp. 1–14) recites the deed of trust and

avers that plaintiffs acceded to its terms, surrendering their old notes and accepting in their room new notes secured by the deed of trust.

It avers that all the creditors of Mrs. Partee are entitled to the benefit of the trust deed and irrespective of acceptance of its terms on their part, and that the clause in the deed limiting its benefits to those who should come in by acceptance within ninety days is invalid.

It avers that Robert Bowman took upon him the trusts of the deed, that he wrote the deed and performed the whole labor of conducting the settlement thereunder, representing to plaintiffs that, under the new arrangement, their debts would be "*secured beyond doubt.*"

The bill attacks the judgment and proceedings thereunder upon various grounds, and expressly on the ground that (1) Sarah D. Partee being a married woman, the judgment against her is *void*, and (2) that the sales under the *venditioni exponas*, were merely pretenced, and the result of collusion between the pretended purchasers and Partee and wife for the purpose of making more secure the footing of the latter on the said lands.

The bill avers that there was ample personal property on which Stewart's execution might have been levied as was well known to Stewart and the sheriff.

The bill avers that the trustee, Bowman, was the counsel of the judgment creditor Stewart, and sued out the execution, and was present at the sheriff's sale representing Stewart, but that unmindful of his duty in the premises to the plaintiffs, he wholly omit-

ted to give them or their attorneys any notice of the said execution, and the sale imminent thereunder, as he was in duty bound to do, in view of his relations as trustee in the said deed, and in view of the representations by him made that, after duly allowing for the incumbrances on the said Yazoo lands prior to the said trust deed, the said lands were ample security for the notes secured by the said deed, and that his default in this regard was a gross breach of trust and confidence.

The bill also avers that the debt represented by the Stewart judgment was among the debts provided for in the trust deed; that Stewart and the Partees knew that the sale under the execution would involve a great sacrifice of the lands, and that neither Stewart nor James D. Partee are entitled to be treated as *bona fide* purchasers for value, neither having paid money, and both well knowing all the infirmities in the judgment and the proceedings thereunder.

The bill then recites that James D. Partee had made various incumbrances on the portion of said lands bought by him under the said execution, and charges that the same were fraudulent contrivances to keep the said Partee and wife in the possession and enjoyment of the said lands.

The bill prays that the said execution titles be set aside, tendering payment of the said Stewart judgment if the same be valid; that accounts was to be taken of the rents and profits; that the incumbrances created by the said James D. Partee may be set aside, &c., and for further or other relief.

Answers.

The bill was answered by all the defendants except Sarah D. Partee, as to whom it was taken for confessed.

Robert Bowman, in his answer, (pp. 61–68,) denies, on "*information and belief*," that the "novation" of the Partee debts was "consummate and complete" at the date of the deed, or ever afterwards.

He admits the execution of the trust deed, but denies that James Stewart's debt was embraced by it, as he had previously obtained a judgment, and says he had no knowledge or notice that plaintiffs, or any others of the creditors, availed themselves "*of the terms of said trust deed.*"

He says that in January, 1867, he had a conversation with Mr. Hyams, the attorney of some of the creditors, who stated he would advise his clients to accept the trust deed; that respondent told him the acceptance must be made within ninety days, and that if he acted as trustee, money must be provided to pay taxes on the wild lands. He says that he "supposed and understood" from this conversation that Hyams would notify him if any of his clients accepted the deed, but that he never received notice or money from him; and that this conversation constitutes all the communication he ever had with any of the creditors on the subject of the trust deed.

He says that in April, 1867, the Crescent City Bank and the Canal Banking Company sued Partee and wife on the old notes, and recovered judgment thereon; and that before that time, and, perhaps, af-

terwards, others of the creditors named in the trust deed sued Partee and wife on the original notes, by reason of which, and the failure of any of the creditors to give any notice of acceptance of the deed, he says the trust failed, and that he was released from the performance thereof; and he insists that the limitation of ninety days was valid.

He admits that he and his partner, Wilkinson, now dead, wrote a letter of the same tenor and effect as Exhibit B, of the bill, but cannot say whether the exhibit is a true copy.

He admits that he wrote the trust deed, but denies that he had anything more to do with the settlement.

Admits that he and his partner thought the trust deed would be ample security to pay the "novated notes," and says that James Stewart was willing to make a reduction, and "settle on liberal terms," if the Partees would pay the judgment in a short time, and that Partee had promised to pay the judgment about the 1st January, 1867.

Respondent knows nothing of Mrs. Partee's proposition being Exhibit C of the bill, or of the receipt being Exhibit D of the bill.

That of the creditors named in said receipt as having accepted the trust deed by surrendering the old notes and receiving the new ones, the Crescent City Bank, Wm. Silliman, C. C. Peck, Richard A. Bartley, and, as he thinks, some others had brought suit and recovered judgment on the old notes in Yazoo Circuit Court, which judgments are still in force.

He admits the suit and judgment recovered by

James Stewart against Partee and wife and that he and Wilkinson, his then partner, were Stewart's attorneys.

He says that the writs issued under the Stewart judgment were sued out by respondent and his then partner, as the attorneys of Stewart.

He denies all fraud and collusion charged in the bill in connection with the sale under the *venditioni exponas*, and says that James D. Partee paid the sheriff $550 as purchase money.

Denies any knowledge that the Partees had personalty at the time the levy was made, and denies that he was the attorney of Stewart, and W. B., S. D., and J, D. Partee in the matter of the sale.

Denies that plaintiffs relied on him, and that, if they did, their conduct was strange in placing the old notes in the hands of other counsel at respondent's place of residence, who sued and recovered judgment on them, and admits that he did not give notice to plaintiffs of proceedings under the Stewart judgment; and says that at the time of said proceedings plaintiffs had able counsel "who had full knowledge of said sale." He says that he was willing to accept the trusts of the said deed and would have done so but that the action and conduct of plaintiffs and other creditors induced him to believe "they had abandoned it," and he says that the price of lands was low at the time of the sale because of "the disastrous seasons to crops, and the low price of money."

He says that he considered the personal property conveyed by the trust deed, the crops to be grown, and the land as ample security for the novated notes.

He admits that Partee is connected with him by affinity.

William B. Partee, in his answer (pp. 107–115), denies that defendant, Bowman, had the whole labor of conducting the settlement under the deed, and admits that Bowman prepared the trust deed, and admits that Wilkinson and Bowman wrote a letter of the same tenor and effect as Exhibit B; and that Exhibit C is the original proposition made to plaintiffs' attorneys in New Orleans.

Says that, meeting Bowman in New Orleans, in January, 1867, he took him to see plaintiffs' attorneys; and that Bowman stated the importance and necessity of the creditors accepting the trust deed within the time prescribed, and that one of the plaintiffs' attorneys, Mr. Hyams, said he would get such acceptance in writing if the creditors would agree, and give notice thereof or send the same to Bowman; and that, except as aforesaid, Bowman never did anything towards a settlement under the trust deed.

Says that the new notes were not made and delivered on the 19th of November, 1866, but afterwards; and then carried by respondent to New Orleans and delivered with the deed of trust, to Mr. Hyams, who was employed to effect a compromise; and that from the time the notes were put in his hands until [21st] of January, 1868, the date of the receipt, Exhibit C, (p. 37) there was "no definite or positive acceptance by said complainants, either verbally or in writing, and that said receipt was the only acceptance made, and he *submits to this court whether that constituted an acceptance of said trust deed.*"

Respondent says, that of the original notes mentioned in the trust deed, there were only returned to him or his wife the note due the Louisiana State Bank, the notes due Edward Dupassier, the note of the Canal Bank, due 21st January, 1862, the notes due Connor & Co., and the note due Slark, Stauffer & Co., and, perhaps, that of McStea, Value & Co. He says that, on the copy of the note due the Canal Bank the 27th January, 1862, delivered respondent, there was endorsed, in the handwriting of Hyams, "Original in hands of Miles & Epperson," the attorneys who recovered judgment on the same; and he denies that he or his wife ever received the original notes due the Union Bank of Louisiana, J. Marsh Denham & Co., the Crescent City Bank, or the original note due the Canal Bank on 27th January, 1862.

Respondent says he signed the receipt marked Exhibit D at the suggestion and request of Mr. Hyams, "who had been acting as his attorney in effecting a settlement under said trust deed."

Respondent denies any fraud or contrivance in the sale under the execution, and that his wife had any personalty out of which the Stewart judgment could have been made; and he says that the conduct of plaintiffs, in bringing suits on the original claims, and failing to give notice to the trustee, Bowman, either verbally or in writing, and their whole conduct in the premises, shows that they did not rely on Bowman to protect their interests.

Respondent denies that Stewart's debt was provided for in the trust deed. Admits that, as the sequel has proved, the Yazoo lands were the only prop-

erty of appreciable value, and denies that plaintiffs were reposing with confidence on respondent.

He says that when the trust deed was executed, the market value of the Yazoo lands was from $40,000 to $50,000; that 1,500 acres were cleared, and that there were in all between 4,000 and 5,000 acres; that by reason of disastrous seasons, an unprecedented overflow, and the demoralization consequent upon these causes, the value of said lands was greatly depreciated.

He denies that he or his wife have ever had any benefit from said lands since the execution sale.

Respondent did not consider it his duty to give plaintiffs notice of said sale, because their attorneys in New Orleans, who were also the attorneys of respondent and his wife, had put a portion of said claims in the hands of attorneys at Yazoo City, from which respondent supposed that they had repudiated said trust deed.

The answer of James Stewart, (pp. 116–119,) which is not under oath, puts in issue every averment in the bill impeaching his judgment against Partee and wife, or the sale thereunder, or imputing fraud in connection with the said judgment or execution, and the averment that the debt, on which his judgment was founded, was provided for in the trust deed.

The answer of James D. Partee (pp. 79–84,) avers the validity of the Stewart judgment and all proceedings thereunder; denies all the averments of fraud charged in the bill in connection with the said judgment and the proceedings thereunder, and avers that he derived a valid title under the sheriff's deed; he,

also, denies that there was any personal property on which the Stewart execution could have been levied. He avers that he bought subject to an incumbrance of over $8,000, and that he paid $550, the amount of his bid.

The answer of F. Barksdale (pp. 77, 78) has no bearing except as to James D. Partee's disposition of the land purchased by him from the sheriff.

T. A. Nelson in his answer (pp. 87–98), *inter alia*, denies on information and belief that any of the creditors accepted the terms of the trust deed, and avers that the failure of the creditors to come in, by written acceptance, within the ninety days named in the deed is an absolute bar.

Respondent denies on information and belief that the original notes were ever surrendered to Mrs. Partee, and, if they were, that no notice of such surrender was given to the trustee, Bowman, avers that the agreement evidenced by the receipt, Exhibit D, was, if made at all, made long after the ninety days had expired, and that it does not appear that W. B. Partee had any authority to make it, his wife, the real party in interest, not having signed it; and he avers that the trust deed became inoperative and void.

Respondent is advised and believes that there was no irregularity in the Stewart judgment or the proceedings thereunder; and he denies on information and belief that there was fraud or collusion in the sale by the sheriff.

Replications.

Replications to the several answers were filed (pp.

76, 86, 123, 124), and considerable testimony was taken, to which we shall refer, in so far as it may be material to the questions hereinafter discussed.

Evidence.

Gov. H. M. Hyams (p. 127), a lawyer of 30 years standing in New Orleans, examined on the part of the plaintiffs, deposed that on 17th July, 1866, Partee came to the office of Hyams & Jonas, who represented some claims against his wife. He expressed "great anxiety" to make the proposition embodied in Exhibit C, of the bill (p. 37), which witness told him he thought his clients would accept. He said he would try to see all the creditors before he left town. In the fall or winter of 1866 he came to the city again on this business and told witness he had modified the proposition so as to make the notes mature a year later each, as it would enable his wife the better to meet them. At his request witness copied the proposition he had left in July, 1866, and added to the copy, in pencil, the words "Hyams & Jonas have notes of Canal Bank, Union Bank, and Crescent City Bank." Mr. Partee handed witness the letter of Wilkinson & Bowman (pp. 35, 36). This letter had strong influence in inducing acceptance of the proposition. Witness informed Partee that his clients did accept. Partee introduced witness to Judge Bowman, and witness told Bowman and Partee in his office that he accepted the proposition for the clients he represented, and it was understood that the trust deed and notes were to be left with witness to be exhibited to the rest of the creditors, and that witness

was to deliver the new notes to such of the other creditors as should accept the proposition.

Probably a majority of the creditors called on witness; some refused to accept, others, probably or possibly influenced by what witness had done, accepted. Witness names the creditors who accepted and refused. The notes intended for the latter he returned to Partee on 21st January, 1868, in New Orleans. The new notes intended for Mr. Miller Partee requested us to retain and deliver to Miller "on his surrendering to us the old notes."

When Bowman and Partee were at witness's office Partee was the "principal spokesman," but Bowman seemed to acquiesce in his representations. Partee said there would be no difficulty in his wife's paying off the incumbrances if the creditors agreed to his wife's proposition. Witness supposed that Bowman's visit was to give him confidence and enable him to impart his confidence to his principals.

Witness knew nothing about the property and relied entirely on what was stated in the letter of Wilkinson & Bowman.

Witness delivered the new notes to the creditors he represented, on the 11th of February, 1867.

The creditors relied on Mr. Bowman to give them timely notice of anything threatening destruction or injury to their rights. Bowman was present when Partee said there would be no difficulty about his wife's paying the previous incumbrances out of the crops if the creditors would give her time. The creditors relied on this assurance, as Bowman knew.

If the creditors represented by witness had heard

of the threatened execution sale in time they would have paid the judgment or bought the property, or protected themselves in some other way.

Witness quotes from a letter dated 13th May, 1867, instructing Miles & Epperson to suspend all proceedings on the original notes and informing them of the settlement.

On cross-examination the witness said he was not aware of any formal written acceptance by the creditors; but that the Canal Bank, the Union Bank, the Crescent City Bank, and Slark, Stauffer & Co. did, in fact, accept within the ninety days, by surrendering old and receiving new notes; and that other creditors, namely, Denman & Co., Connor & Son, E. Dufusseur & Co., and McStea, Value & Co. did the like, but cannot remember whether within the ninety days or not. We agreed to accept immediately for those creditors we represented.

Witness refers to letter from B. Partee to Hyams & Jonas, dated Lake Dick, May 28th, 1867, in which the writer, "*anxiously expresses the hope that all will consult their interest by accepting at once*," &c.

Witness does not remember any expression of Bowman's "making it imperative on the creditors to "accept in writing, and within ninety days from the "date thereof." If Bowman had required formal acceptance, it would have been given—certainly for the creditors we represented.

After the new notes were delivered, Miles & Epperson were not looked to to collect the debts which it was expected would be paid to the holders themselves in New Orleans.

Witness says that in January, 1868, which was after the maturity of the first new note, and when we gave Partee the new notes which had been refused, and such of the old notes as had not previously been delivered to him, he said nothing about non-compliance with the terms of the deed, but said that the crops had failed and people could not meet their obligations. Extensions were constantly made, and when we asked for our fees our clients told us the notes were not paid and we must wait.

The settlement with Partee relieved counsel of any further duty, as it was expected the notes would be paid to the holders.

The plaintiffs and defendants examined a number of witnesses, whose testimony, however, does not bear very materially on the assignments of error. The deposition of Lamar Fontaine, a surveyor and civil engineer of twenty years experience, a witness for plaintiff, is important as showing the immense sacrifice made by the sale under the Stewart judgment. This witness estimates the aggregate value of these Yazoo lands at $132,000. It may be pertinent to refer to the depositions of two witnesses for the defendants, R. S. Hudson (p. p. 164–5,) and W. S. Epperson (p. p. 174–5,) attorneys who brought suit on several of the old notes, especially Epperson's, as he brought suit and recovered judgment on several of the debts now claimed to be secured by the trust deed.

There can be but one opinion, after reading these depositions, as to the great sacrifice caused by the sale under Stewart's judgment.

Decree pro confesso.

On the 3d February, 1875, the bill was taken for confessed as to the defendant, Sarah B. Partee.

Final Decree,

On the 10th February, 1875, the cause came on for final hearing, and the Court, being of opinion to deny the relief sought, dismissed the bill.

Assignment of Error.

The error complained of in this appeal is the dismission of the bill.

Argument.

It does not appear on what view of the case the decree was based; but we maintain, in opposition to it, that if the Court treated as valid the judgment against Partee and wife and the proceedings thereunder, it was error, or if, regarding the judgment and everything done pursuant to it as invalid, the Court still thought the plaintiffs not entitled to any benefits under the trust deed, its conclusion was erroneous. We will consider these questions in their order.

The Validity of the Judgment.

The great question in the case is as to the validity of the judgment of the State Court against Partee and wife at the suit of James Stewart (p. p. 39–43.)

Our learned associate has argued that *quoad* the suit against Sarah D. Partee the State Court was exercising a special statutory power, and that in the exercise of that power its jurisdiction was that of a court of special and limited jurisdiction.

But, supposing this court should be of opinion that the State court was, in the exercise of the power, acting as a court of general jurisdiction, we maintain that, upon well-established principles, the judgment is a nullity.

However liberal the law may be in presumptions in support of the judgments and decrees of courts of general jurisdiction, when collaterally assailed, this much would seem to be irrefragably established that to give any such judgment or decree validity the record must show that the case on which the court acted was within the commission under which the court was sitting. It may have proceeded *ordine inverso*, or the record may fail to show that every legal step was taken in the progress from the original process to the judgment; but these do not impair the judgment when attacked by a side wind, provided *the case* was such a case as the court might take cognizance of. "The dignity of the tribunal will not supply the want of power or render an excess of jurisdiction valid," and, therefore, it is said in the case of the Marshalsea (10 Rep., 76), that if the Court of Common Pleas hold plea in an appeal of death, robbery, or any other appeal, and the defendant is attainted, it is *coram non judice*, and then is illustrated the case of an erroneous proceeding after jurisdiction has vested, by the supposed case of the arrest of a duke or earl under a *capias* issued by the Common Pleas in an action of debt, which process, though against law, protects the sheriff, because the court has jurisdiction of the cause. The principle applies to all courts, because "no authority which is derived

from the law can transcend the source from whence it came."

Judged then, by this principle, is the judgment against Mrs. Partee a nullity, so as that the same can be wholly disregarded in the case at bar?

At common law a *feme covert* could not make a contract, and, by consequence, no court could render a judgment against her on a contract made during coverture, for, as has been said, a judgment is a contract of the highest dignity.

No where did this principle obtain in greater force than in the State of Mississippi, until the legislature of that State introduced a modification of it, by enacting that the property of a *feme covert* owned by her at the time of, or which might come to her during, coverture, should continue to be her separate property; and that all contracts for supplies for her plantation, &c., made by her and her husband, might be enforced against and satisfied out of her separate estate; and that the husband should not be liable for debts contracted by the wife before or after marriage "if she hold separate property under this act." (Code 1857, pp. 335, 336.) It is further enacted that, "In addition to the remedies now existing by the common law, by and against married women, the husband and wife may sue jointly, or, if the husband will not join her, she may sue alone for the recovery of any of her property or rights; and she may be sued jointly with her husband on all contracts or other matters for which her individual property is liable; *but if the suit be against husband and wife, no judgment shall be rendered against her, unless the liability of her separate*

property be first established." (Code 1857, p. 336, § 26.)

The cases cited by Mr. Nugent fully establish that a suit against a married woman, under this act is essentially a proceeding *in rem*, its end and object being satisfaction out of a specific thing *and no more.* And, agreeably to the nature of the proceeding, the Supreme Court of Mississippi has held, as shown, by the cases referred to, that the nature of the contract and the property of the *feme* which it is sought to reach, shall be set out and described in the proceedings, and this upon the ground that the only judgment which can be rendered in such a proceeding is one subjecting the property of the *feme* to the satisfaction of the claim in which the suit is founded. To that extent, and that extent only, has the common law been displaced; and, as the cases cited by Mr. Nugent show, a *general* judgment against a *feme covert* can no more be rendered now in Mississippi than it could have been before the statute was passed.

The principle that a general judgment against a *feme covert* is a nullity is not confined to the State of Mississippi.

Griffith vs. *Clarke*, 18th Md., 457;
Morse vs. *Tappan*, 3 Gray, 411;
Higgins vs. *Peltzer*, 49 Mo., 152;
Swayne vs. *Lyon*, 67 Pa. St., 439.

Mr. Freeman, in his work on judgments, § 150, (second edition,) controverts these cases, but upon the authority of cases of which some are not in point, and others arose in States where *femes covert* are en-

tirely *sui juris*. It is remarkable that a distinction so obvious should have failed to arrest his attention. His doctrine as to judgments against infants (§ 151) is equally superficial; the illustrations employed by him being cases where infants have been proceeded against, not on their own contracts, but to subject decedent's debts lands which have descended to such infants.

In the case of *Cary* vs. *Dixon*, 51 Miss., 593, it was held in a collateral proceeding that a general judgment against a *feme covert* was an absolute nullity. This case is exactly parallel to the case at bar.

In Mississippi it is held that a domestic judgment is invalid, unless the record contains some entry or averment that notice was given; and, furthermore, that such entry or averment may be controverted. See the cases cited in 1 Smith's Lead. Cas., 1126, (7 Am. ed., 1872.) It is submitted that these cases should have great. if not controlling, weight in the case at bar, especially in view of the ruling of this court that a judgment of a State court will be regarded in a court of the United States, sitting in such State, as the judgment of one State court is regarded in the courts of another State. (*Pennoyer* vs. *Neff*, 95 U. S, 733.)

We refer to the cases of *Bigelow* vs. *Forrest*, 9 Wall., 339, and *Windsor* vs. *McVeigh*, 93 U. S., 274, as having an important bearing on this case.

It is to be remarked that the judgment here assailed is a judgment *by default*, and that the purchasers at the execution sale, being Stewart, the judgment creditor, and a son of Mrs. Partee, had full no-

tice of her disability as a *feme covert*, (see answer of Stewart, p. 116,) and it is not pretended by those who claim under the son, that they were ignorant of the fact that Sarah D. Partee was a *feme covert*.

Title to relief under the deed of trust.

It is to be noted that the trust deed does not contain a condition making it *void* as to any creditor who shall not accept its terms within 90 days, in other words a formal acceptance of the terms of composition within that period was not part of *the limitation defining the estate conveyed to the trustee Bowman.* The provision is that failure in the above behalf shall be constructively a refusal to accept and so debar participation in the benefits of the deed (p. 34.) The deed admits of no benignity of interpretation, because drawn with technical propriety and by a lawyer. That the draughtsman fully appreciated the distinction adverted to, is fully shown by the other provision of the same clause of the deed which makes the instrument "*void and of no effect*," in case the notes secured by it shall be paid punctually as they mature —which is the usual clause of defeasance of a mortgage deed.

The reading of the deed insisted on in the answers, namely, that the deed became wholly inoperative because none of the creditors had formally accepted in writing within 90 days is wholly inadmissible, because it makes the instrument, which was prepared with great care and particularity, insensible and repugnant, in an important particular, for one of the most important recitals in it is—"and whereas,

a large number of the holders of the aforesaid claims against her have *signified their consent to release and discharge* her from the aforesaid indebtedness upon the aforesaid claims," upon her and her husband doing what the offer of compromise previously submitted by them required (p. 32.) Next after this recital, the words of the deed are, "Now, therefore, in order to carry out and effect THE AFORESAID SETTLEMENT and payment of the aforesaid indebtedness of said Sarah D. Partee, she, the said Sarah D. Partee, and the said William B. Partee, HAVE EXECUTED AND DELIVERED, and will execute and deliver to each of the aforesaid creditors five several promissory notes," &c., &c., (p. 33.) Now, it is simply an absurd perversion of language to hold that the ninety-day provision was intended to effect the settlement with those creditors who had already accepted the terms of the offer of compromise of 19th July, 1866, *which contained no provision as to the mode in which it was to be* accepted; simply providing that the notes to be given should be secured by a mortgage of the Yazoo lands (p. 37.) Such a construction would be little less than to make the deed of trust, which was, in great part, to carry out a settlement already made, a snare as to "the large number of creditors" *whose acceptance* of the terms of compromise is, as we have seen, recited in the deed, *which deed*, as it recites, *was intended to be and was pursuant to the offer of compromise.*

If the ninety-day clause subserved any purpose at all, it was, no doubt, to quicken the non-assenting creditors to come in under the deed.

But when the deed is viewed in the light of the surrounding circumstances, as must be every writing if we would grasp its full intent and meaning, it becomes certain, to a moral demonstration, that the parties to the instrument could have had no other intention than that which we have already gathered *ex visceribus facti.*

Now, what were the surrounding circumstances of the deed? First is the written overture from Mrs. Partee to her creditors (p. 37), which, in addition to what has been stated already, states that, "to secure confidence in the necessary writings, titles, &c., incident to a final close of my proposition, I have selected Judge Robert Bowman and Judge Wilkinson, of Yazoo City, Mississippi, to see to the proper execution of the deed of trust," and to act as trustee, or to select proper persons for that purpose, and also to see that proper conveyances were executed, &c. It then goes on to state that, "Messrs. Hyams & Jonas "will attend to any of the business which the cred- "itors may choose to place in their hands, and to the "distribution of the new notes after they are exe- "cuted."

The facts which preceded the execution of the trust deed are fully given in the deposition of Governor Hyams (pp. 127–136), who was one of the attorneys employed by Partee to carry out the terms of settlement in New Orleans. To him and his partner the creditors were referred. This witness tells us that he accepted the terms of settlement *at once* for the parties he represented, viz., the Canal Bank, the Crescent City Bank, the Union Bank, and Slark,

Stauffer & Co., to whom he delivered the new notes on the 11th February, 1867, the old notes having been surrendered; he also tells us *that he added, in pencil, to Partee's written proposition, the words "Hyams & Jonas have notes of Canal Bank, Union Bank, and Crescent City Bank."* (p. 127.)

The testimony of this witness shows that Partee, who represented his wife in all this business, was exceedingly anxious that all the creditors should come in. The witness says that as late as January, 1868, and after the first note fell due, and when he gave him back the new notes which had not been called for, and the old surrendered ones which had not been given him already, Partee said nothing whatever about a non-compliance with the terms of the deed, but that he did say that "crops had failed and people could not meet their obligations," (p. 135). At the time referred to by the witness, viz.: 21st January 1868, *more than one year after the date of the deed*, Partee signed a formal receipt to Hyams & Jonas, preceded by a schedule of the creditors who had accepted and those who had stood out, showing that all the plaintiffs had surrendered the old notes and received the new ones. This receipt contained these remarkable words: "I have received the original notes so bracketed, in the first column, *all except those due J. W. Miller, and which will be sent to me when received by Hyams & Jonas*" (p. 38), thus giving, it will be noted, the creditor, Miller, an *indefinite time* to come in. On the 28th May, 1867, Partee in a letter to witness expressed the hope that *all the creditors would consult their interest by accepting at once* (p. 131). It

is, furthermore, to be noted that this witness says that there was some delay in sending the notes to him. What the delay was we are not informed, but it is inconceivable indeed, that there should have been any delay by Partee in sending the new notes to his attorneys, if he intended to insist upon a rigorous observance of the ninety day limitation. His want of punctuality in this regard is strong corroboration of the witness's statement that no attention whatever was paid to the limitation.

The statement of Bowman in his answer (p. 61) that he told Hyams that the creditors must accept within ninety days, has no intrinsic weight, supposing it to have any bearing on the case at all, for Bowman says in his answer (p. 62) that aside from drawing the trust deed *he had nothing whatever to do with the settlement*, and Partee himself, in his answer (p. 109) says that meeting Bowman in New Orleans in January, 1867, at his request, Bowman went with him to the office of Hyams & Jonas, and that Bowman spoke of the importance of the creditors coming in within the ninety days, all which, no doubt, had reference to those creditors who were still standing aloof from the proposition of compromise.

But neither of these defendants denies that creditors assented in the way Hyams says they did; they *only deny that there was any formal acceptance in writing within the ninety days.* Partee says that the receipt of January, 1868 (p. 38), was the only acceptance either verbally or in writing, and "*submits to this court whether that constituted an acceptance of said trust deed*" (p. 109). He does not say that no verbal

acceptance was given to Hyams and Jonas, his attorneys, although he admits that he employed these gentlemen as his attorneys in the business. (p. 109.)

Great stress is laid in the answers on the fact that suits were brought on the original notes by some of the creditors who hold the new notes and claim under the trust deed; but Hyams tells us in his deposition that so soon as those of the parties whom he represented came in under the deed, he instructed the attorneys employed by him to stop proceedings (p. 135). See also the deposition of W. S. Epperson (p.174).)

It is not pretended that any of the creditors who sued on the original notes has pressed such suit by attempting to enforce satisfaction. Now, nothing is clearer than that the mere prosecution of such suits, even to final judgment, is no evidence of a waiver or disaffirmance of the trust (8 Pick., 113, *New England Bank* vs. *Lewis et al.*)

Now, supposing, *argumenti gratia*, that the ninety-day limitation in the deed was intended to apply to the "large number" of creditors who, as the deed recites, had already given in their adhesion to the terms of compromise, it is insisted, with confidence, that the conduct of Mrs. Partee, who was, as to this matter of her estate, *sui juris*, raises against her an equitable estoppel which forever concludes her, and which estops her in equity from enforcing the provision limiting the duration of her offer of settlement to ninety days. It is not deemed necessary to do more in support of this position than to refer to the argument of our learned associate, Mr. Nugent.

P. PHILLIPS,
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for Appellants.